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United States Department of Justice
Civil Rights Division
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

January 30, 2024

Re: Hostile environment for LGBTQ students in North Carolina's public schools

To the Office for Civil Rights and Civil Rights Division:

North Carolina's public schools are systematically marginalizing lesbian, gay, bisexual, transgender, and queer (LGBTQ) students in violation of Title IX.

Under the leadership of the North Carolina State Board of Education (SBE) and the Department of Public Instruction (DPI), local school districts are barring LGBTQ-affirming content, outing transgender students, erecting barriers to LGBTQ students receiving needed health care at school as well as support from educators, and prohibiting transgender girls from playing athletics consistent with their gender identity.

These statewide mandates,¹ coupled with a lack of guidance from SBE and DPI on how to enforce them without violating Title IX, place educators in an impossible position. They must choose between, on the one hand, following state leaders' orders or, on the other hand, federal and state legal obligations as well as their professional obligations to their students.

¹ SBE and DPI's actions stem from SB49 and HB574, both enacted in 2023 and included as appendices to this complaint, which touch on nearly every interaction students have with their schools. In the same legislative session, North Carolina adopted a ban on gender-affirming care for transgender minors. Hannah Schoenbaum, [Veto Overridden: Ban on Gender-Affirming Care for Minors Takes Effect in North Carolina](#), Associated Press, Aug. 17, 2023. Because the ban on gender-affirming care does not directly target the state's public educational system, it is not a focal point of this complaint. It does, however, underline the current extreme anti-transgender climate in the state as well as the myriad challenges facing transgender youth.

Testimonials offered by students, parents, educators, administrators, and school board members² reveal these pernicious mandates are already harming students: culls of curriculum and libraries; students forced back into the closet; students walled off from supportive services and outlets beneficial to their mental health; and a pall of fear cast over the whole of the state's public education system.

Yet confronted with the hostile educational environment and the mental health consequences for LGBTQ students and those from LGBTQ families, SBE and DPI have taken no action. This is not because Title IX and the protections it offers to LGBTQ students are unclear. But it may owe something to the fact that the leadership of these two state agencies features some of the most vocal opponents of LGBTQ equality in North Carolina.

Regardless of the cause of their inaction, the failure of SBE and DPI to enforce the protections of Title IX demands federal action. Without a clear determination that North Carolina is currently violating Title IX, we know that our schools, and LGBTQ public school students especially, will continue to suffer. And, without remedial efforts to make our schools welcoming to all students, we know the damage today will result in harm for years to come.

² Between November 6 and December 15, 2023, the Campaign for Southern Equality reached out to our contacts and partners for information about the impacts of SB49 and HB574 on North Carolina public schools. We received information from approximately 120 individuals through school board testimony (in-person, recorded online, or shared in writing), an [online submission](#) form, email communications, and personal interviews. Of these, 24 individuals agreed to be quoted directly in this complaint and consented to speak with OCR investigators upon request, so long as their names are not shared with SBE, DPI, their school districts, or the public. These testimonials are excerpted when most relevant in Part II below. More complete testimonials, organized by school role and relationship, are included in the attached Appendix A.

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I. Preliminary information required by OCR complaint form

The complainant is the Campaign for Southern Equality (CSE). Based in Asheville, North Carolina, CSE is a nonpartisan, nonprofit organization dedicated to working toward full LGBTQ equality in the South. As part of this work, CSE provides training, policy guidance, and assessment services to assist Southern schools in becoming more inclusive and welcoming for students of every sexual and gender identity. This often includes providing assistance to North Carolina public schools as well as LGBTQ families and students seeking full access to a quality, affirming public education.

CSE brings this systems-level complaint on behalf of the LGBTQ students, families, staff and faculty who are subjected to sex-based discrimination in North Carolina's public schools.

CSE's best point of contact for this complaint is as follows:

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Supportive Schools Director
Campaign for Southern Equality
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Asheville, NC 28802
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The complainant is represented by counsel:

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The agencies that are the basis of this complaint are the North Carolina State Board of Education (SBE) and the North Carolina Department of Public Instruction (DPI). DPI is a recipient of federal educational funds,³ making it subject to Title IX.⁴ And, given

³ See, e.g., DPI, [NCDPI Awarded \\$7.9 Million to Address Math Disparities in Rural Schools](#), Dec. 11, 2023.

⁴ 20 U.S.C. § 1681(a) (“No person in the United States shall, on the basis of sex, . . . be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]”).

its supervisory role in the provision of a public education in North Carolina,⁵ SBE is a necessary party to resolve the allegations in this complaint.⁶

The legal basis of this complaint is discrimination based on sex in violation of Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681-1688. The discriminatory acts are described in detail in Parts II, III, and IV below.

Discrimination is ongoing against LGBTQ students in the form of a hostile educational environment. The complainant does not request a waiver of the 180-day time frame for filing its complaint.

The complainant previously raised many of the allegations in this complaint in two memoranda to the above-named state agencies. Supporting documents, including those memoranda, the state agencies' response, and the text of SB 49 and HB574, are appended to this complaint.

This complaint is being submitted simultaneously to the United States Department of Justice, Civil Rights Division, and the United States Department of Education, Office for Civil Rights (OCR).

The remedy the complainant seeks is, in short, a safe, supportive, and welcoming school environment for LGBTQ students, families, and staff that complies with Title IX. Requested remedies are described in detail in Part IV below.

II. Under the supervision of SBE and DPI, North Carolina schools are implementing policies and practices that discriminate against LGBTQ students.

A. LGBTQ-affirming materials are being removed from schools.

Under the leadership of SBE and DPI, schools are barring “[i]nstruction on gender identity, sexual activity, or sexuality . . . in the curriculum provided in grades kindergarten through fourth grade, regardless of whether the information is provided by school personnel or third parties.”⁷ This ban sweeps broadly, with “curriculum” including “the standard course of study and support materials, locally developed curriculum, supplemental

⁵ See N.C. Gen. Stat. § 115C-12 (“The general supervision and administration of the free public school system shall be vested in the State Board of Education.”).

⁶ See United States Department of Education, Office for Civil Rights, [OCR Complaint No. 11-16-1453, Letter of Findings, Oct. 14, 2016](#) (adding SBE to OCR investigation of complaint alleging, *inter alia*, Title IX violations).

⁷ N.C. Gen. Stat. § 115C-76.55.

instruction, and textbooks and other supplementary materials.”⁸ This could be interpreted to encompass “anything in the classroom.”⁹ Schools are also increasing surveillance of LGBTQ-affirming content in instructional materials¹⁰ and in students’ library selections.¹¹

Strict compliance with these mandates produces absurd results. Complying with the letter of the law would bar reading stories about opposite-sex-led families, as surely heterosexuality is a sexual orientation and, hence, implicates sexuality. And eliminating all instruction on gender identity would bar everything from the use of “he” or “she” in the classroom to students learning about women like Amelia Earhart, who overcame discrimination based on their gender.

To avoid implementing a total ban on references to gender and sex, and heedless of Title IX, some school systems have divined that the legislature intended to target only material featuring LGBTQ people or themes. Under this interpretation, a book with a mother and a father may be read in classrooms, while a book with two moms, two dads, or two male penguins raising a chick together is out of bounds.¹²

Going even further, some school systems in North Carolina have begun over-complying with these mandates. The Yancey County Board of Education applied the K-4 curricular restriction¹³ to all instruction on gender identity in its K-12 schools.¹⁴ And, though the law does not require it, the Johnston Board of Education removed all books touching on (its conception of) gender identity from its elementary school libraries, which serve kindergarteners through fifth graders.¹⁵

The restrictive LGBTQ policies and practices mandated by SB49 have already generated harm in North Carolina schools, as reflected in testimonials shared with CSE:

⁸ *Id.*

⁹ Board of Education member A77, Appendix A.

¹⁰ See N.C. Gen. Stat. § 115C-76.35(b)(3-4) (requiring procedures for parents to inspect, review, and object to all instructional materials used in their child’s classroom).

¹¹ See N.C. Gen. Stat. § 115C-76.25(a)(12) (recognizing a legal right of parents to review records of materials their child has borrowed from a school library).

¹² See [PEN America Index of School Book Bans, 2022-23](#) (noting bans of the children’s book *And Tango Makes Three* and other stories featuring same-sex couples); Evanston Public Library, [Shhh! These kids' books have been banned](#) (same).

¹³ *Supra* note 7.

¹⁴ Yancey County School Board, [Policy 3540: Educational Programs: Comprehensive Health Education](#), revised Dec. 15, 2023.

¹⁵ T. Keung Hui, [Johnston passes policy against books on gender identity in elementary school libraries](#), *The News & Observer*, Nov. 10, 2023.

K-8 School Administrator (A78)¹⁶:

Here at [redacted],¹⁷ we have a comprehensive health education program for grades K-8. Our program includes crucial topics for child development, like how to be a good friend and how to be respectful to others and ourselves. Our program also includes teaching about consent and gender identity. This essential curriculum aids the cultivation of a safe learning environment, provides age-appropriate lessons for human health and identity, and promotes deeper understanding of human differences. Not only that, the integration of this curriculum ensures we comply with Title IX regulations.

We have gender-diverse families in our school who feel safe in a learning community where their peers benefit from a curriculum that emphasizes knowledge and acceptance. The importance of mental health for students has become a paramount concern in schools post-COVID. We know the rate of suicide has risen, especially among young people experiencing discrimination. Cultivating a more accepting environment has been vital to the mental health of everyone involved.

Teaching children about gender identity in an age-appropriate manner allows them to become more accepting and understanding of differences among their peers and themselves. It helps children feel more confident, fosters an essential sense of belonging among students, teachers, parents, and caregivers, and enables students to perform better academically. Learning about gender identity at an early age helps children develop a better understanding of gender-based rights and responsibilities, as well as an awareness of gender-based discrimination. Teaching children about gender identity in elementary school helps establish and preserve an inclusive and safe environment for all students.

Following SB 49 would require us to eliminate the majority of the comprehensive health education program in grades K-4. Censoring these pivotal topics for our younger students, especially gender identity, will create an environment where students and families are misunderstood by

¹⁶ Individuals who agreed to be quoted in this complaint did so pursuant to the condition that their personal identifying information would not become publicly available. Each is identified by a letter-number code, so that their name and contact information may be provided to OCR investigators upon request.

¹⁷ To further protect confidentiality, names of individuals, schools, school districts, and municipalities have also been redacted from individual testimony. When names of individuals, schools or districts are included, it is because that information comes from media sources that are already publicly available.

their peers and excluded from the daily affirmations all students deserve. A critical consequence of eliminating this instruction for families and staff will be increased misunderstandings that affect a hostile classroom environment. As a result, the risk for adverse mental health consequences like depression, anxiety, and even self-harm and suicide among students increases substantially.

Parent of high school student (P24):

In our schools, fourth grade puberty discussions for girls have been moved to fifth grade due to SB49. I think this is profoundly irresponsible, as some girls get their periods in fourth grade. Failing to provide them with information about their own puberty experiences is cruel and a grave abdication of our duty to provide adequate health education. A school board member wants the policy related to the health education component of SB49 to be extended to 12th grade, meaning no discussions of sexual orientation or gender identity would be allowed in any school in our district, regardless of the student's age or year. How on earth will students learn about sex at all, since all sexual intercourse requires an orientation? How will they receive information on contraception or STDs? How will students know that deadnaming¹⁸ a transgender person is a form of bullying? Ignorance is dangerous in so many respects.

Parent and elementary school media coordinator (PE34):

I am a media coordinator in a K-5 [redacted] school. I have been at my current school for a little over a year and, due to rather conservative leadership, have had a hard time curating a library book collection that is inclusive due to reticence by admin to include age-appropriate books on LGBTQ themes. This year, I brought about 35 books to my MTAC (Media and Tech Advisory Council) for approval to be included in our collection and six were flagged by admin and sent to the [redacted] [assistant] superintendent, [redacted], so that she can read them and see if they are a violation of SB 49. My MTAC, in general, strongly supports their inclusion into the library collection. We are currently still on hold with the six titles, as she says she doesn't know yet if these books will be allowed by the new law. Three have themes of the trans experience, one is specifically about

¹⁸ “Deadname” is a term that some transgender people use for the name they were given at birth but no longer use (similar to cisgender people not using their given name) following their gender transition. The term conveys how strongly some trans people feel about their former identity, and how that person no longer exists. The term can be used as a noun or a verb. To deliberately “deadname” a person is a form of gender-based bullying or harassment, as it is a way to deny the reality of that person's identity and take away their power to define themselves.

[LGBTQ] pride, one a sweet story about a girl who happens to have two moms, and the other is Sharice's Big Voice which is simply the true story of how Sharice Davids became a Native American Congresswoman (in it she states she is lesbian). While this whole conversation was unfolding, a first grade teacher who is on my MTAC came up to me in private to ask if it's ok that she has a book in her classroom that features all kinds of families, including same-sex families. She reads it in the beginning of the year with all of her classes because she feels it is a beautiful story about community and about being loved where you are, but she was fearful that she would be crossing the SB 49 law. I advised her not to make any changes or exclude the book and told her that if anyone questioned her about it she can say she'd run it by me and that I had told her to keep it.

Last week, I discovered that the district has decided to quit the partnership we have had for years with the [redacted] Public Library system which provides universal access to library cards for all [district] students. For years, all [district] students can use their student ID (lunch number) to borrow books from any branch of the [redacted] and can access the excellent e-book and audiobook collection, NC Kids Digital Library, on SORA. As a result of over-adherence to SB 49 and fear that students could access books not directly approved by [redacted] officials (I have to assume these books are ones with LGBTQ subject matter), the partnership has now become an "opt-in" program. This had not been communicated to principals or to media coordinators. I happened to figure out what was going on when some students began to report they were unable to access their books (these were [Exceptional Children] students who were listening to Battle of the Books, aka EBOB, audiobooks so that they can participate in the reading program) and I went to see a [redacted] librarian to find out what was going on. The district had emailed out a notification of the opt-in and gave families ONE WEEK to do so. Thankfully, I caught this, notified all the district [media coordinators], and we were able to push the due date back and expand the ways this information was getting out to families. In the meantime, I have students who are unable to access the books they had been reading, [Exceptional Children] students who are no longer able to adequately participate in EBOB (I'll find another way, of course, but am furious that this has happened to them), and have a fifth grade teacher whose entire class lost the e-book they all read together every year as a supplement to their Wit and Wisdom curriculum.

Board of Education member (A77):

The language of [SB49] creates a hostile and discriminatory learning environment where students who may identify as transgender or as members of the LGBTQ community, or who have families who identify as such, are no longer allowed to access supplemental materials that reflect or validate such identities in our community. Effectively, this creates a discriminatory, hostile learning environment where, at a very young age, it is communicated that their identity or that of their families is not welcome, while the identity or families of their cisgender straight peers [are] allowed to be represented. Already in our district, we have had parents who are hostile toward members of the LGBTQ community, and submit complaints to principals that an employee in the school is expressing their LGBTQ status in the school or on their personal social media accounts. Also in our district we have already had multiple public comments, empowered by the PBR law,¹⁹ during board meetings that target specific teachers or staff for having such materials in a school building, thus stigmatizing transgender or LGBTQ employees and creating a hostile workplace environment. All of this creates an environment where the principal must confront employees about such complaints and consequently the employee becomes targeted for their sexual orientation or gender identity, which is clearly a breach of their rights as expressed in federal laws such as Title VII and Title IX.

Parent of elementary school students (P25):

SB49 intentionally removes mention of LGBTQ families from our schools. This removes our rights to have broad, equal, and diverse representation of humans in our communities. SB49 removes the rights I have worked for in building trusting and open relationships with my children to allow them to share non-grade related personal information if and when they feel comfortable.

Parent of elementary student (P28):

Friday afternoon before the longstanding and nationally recognized “Banned Books Week” (that [redacted] schools have actively participated in since the 80s), the district’s Chief Communications Officer, [redacted], sent an internal email, leveraging language she heard from [redacted] leadership including Superintendent [redacted], that basically banned Banned Books Week participation this fall. In the internal email, she incorrectly stated that [Banned Book Week] goes against [redacted] Pillars of Excellence (in fact,

¹⁹ The “Parents’ Bill of Rights,” or “PBR,” is a part of SB49. Though SB49 contains provisions beyond the “Parents’ Bill of Rights,” the entirety of the law is often referred to colloquially by this name, or as “PBR” or “the PBR.”

they align), gave a directive to pull down any materials and cancel any planned events, and warned (threatened?) employees [that] they could run afoul of SB49 if they failed to comply. Understandably, the email was poorly received, and shared outside the walls of [redacted]. Upon becoming publicly shared, [the administrator] backpedaled and sent a second, far weaker email. The dampening effect of the 1st email was not assuaged by the follow up, so only a handful of [redacted] libraries participated. In this case, fear, threats and gross misinterpretation of the law won out.

Parent of elementary school student (P28):

[Redacted] Superintendent, [redacted], has made *at least* three unilateral decisions to pull LGBTQ books from either curriculum or library shelves.

- 1) Let's Talk About Sex
- 2) Red: A Crayon's Story
- 3) Jack of Hearts (and Other Parts)

She made these individual decisions by undermining both the school level and district level Media Advisory Committees, which saw relevant educational value in each title. Jack of Hearts is particularly notable, following a public comments session in March 2022 where a procession of at least a dozen current and former [redacted] students stood up to tell their own personal experience of sexual assault by classmates, and the ways the adults failed them. One after another, these young adults pleaded for information and conversations centered around consent, removing the stigma of reporting and consistent accountability after a report has been made. It was gut wrenching, as it should've been, and the strongest instance of the "student voice" I have seen yet. These actions from the Superintendent clearly tell [redacted] staff and students that they do not matter, nor does the known harm foisted upon them by ANTI-LGBTQIA sentiment, legislation and hateful actions of a loud, but tiny minority.

B. School officials are outing LGBTQ students to their parents and peers.

Schools have also begun notifying parents "[p]rior to any changes in the name or pronoun used for a student in school records or by school personnel."²⁰ If students do not or cannot discuss a name or pronoun change with their parents, then schools must encourage the child to do so, "[f]acilitate discussion of the issue with the child's parents," or both.²¹

²⁰ N.C. Gen. Stat. § 115C-76.45(a)(5).

²¹ N.C. Gen. Stat. § 115C-76.45(b).

They do so irrespective of whether such notification could foreseeably cause child abuse or neglect,²² and without providing any safeguards from the harms of being outed.²³

Unsurprisingly, these requirements disproportionately harm gender non-conforming students and have placed school personnel in untenable situations:

High school student (S88):

I am a transgender student (I use he/him pronouns), and I have been out at school for 2 years (since 8th grade). My parents are not accepting of me and have not allowed me to use my name in the classroom. I came out secretly to my teachers in 9th grade, and this made me feel a lot safer at school. This new “Parents Bill of Rights” has made it mandatory for my teachers to tell my parents the fact that I use a different name and pronouns. My parents disapproved, of course, and it was a fight for me to be able to be who I am in a place that I’m in almost every day. I already suffer from mental health issues like depression, gender dysphoria, and anxiety, and the ongoing battle of trans rights (MY rights) aren’t making it any better.

High school student (S93):

I am fortunate enough to have such loving parents that they would not disown me on the grounds of being lgbtq+ (I am non-binary and currently questioning my sexuality), however that does not mean they would be entirely supportive of me either. My mother is fine with me being “gay,” so long as I’m never in a relationship with anybody. A very close sentiment to “you can be gay, just not around me.” My father is openly homophobic, so I’ve never even attempted to come out to him. I am also fortunate enough that my parents don’t perceive my gender non-conformity as gender non-conformity, but more so a fashion choice. Even so, I know my parents would be even less supportive of me being non-binary than me being “gay,” so I don’t dare come out to them. Within the recent county mandated email alerting parents, I pretended none of my friends could pronounce my legal name so I used the name [redacted] instead, which they begrudgingly accepted. But this forced outing bill could potentially put me in danger or

²² Compare N.C. Gen. Stat. § 115C-76.45(c)(2) (providing an abuse or neglect exception only for written records requests from parents) with N.C. Gen. Stat. § 115C-76.45(a)–(b) (lacking similar exceptions when it comes to the encouraging and/or facilitating discussion requirement).

²³ To “out” someone is to disclose their LGBTQ identity without their permission or consent. This may occur deliberately or accidentally, and by an individual or an institution. Because of pervasive animus against LGBTQ people, sharing this information can put them at risk of bullying and harassment, as well as family rejection or abuse. To do so without a person’s consent compromises their ability to manage their own safety and privacy.

make my parents remove financial backing, which is huge since I'm starting college next year.

High school student (S96):

Multiple friends have been reported to admin and outed by them, some even several times. Nicknames have also been banned, “just for good measure.” Our principal [*redacted*] is transphobic and homophobic. She has made our GSA [Gay Straight Alliance, or Genders and Sexualities Alliance] club no longer feel like as much [of] a safe place as it is meant to be. She tries to be as strict and enforcing with her rules as possible. She has asked all the teachers to report uses of other names. Again, including nicknames.

High school student (S97):

I personally have a supportive family who has put my preferred name in PowerSchool,²⁴ but my friends are no longer feeling safe going by their preferred name and pronouns because they're afraid that they will be outed to their families who are not supportive. These friends are scared for their safety and well-being.

High school student (S91):

My teachers have had to warn us that they are required to out students who request to be addressed by their preferred name and pronouns, and as a member of the LGBTQ+ community, it is scary seeing policies like this being implemented. It is already hard enough as it is to feel accepted and happy with yourself because of societal norms and the struggles that come with being queer or trans openly, and knowing that policies like this could restrict myself and other queer youths is terrifying. I am pansexual and am lucky enough to have an accepting support network, but I know many who do not and are scared of coming out or feel ashamed, and all these policies do is stifle and isolate students who are struggling with their identity and safety as a result.

Middle school counselor (SNC68):

I am also worried about the duty to notify when a student discloses that they would like to change their preferred names and preferred pronouns. My

²⁴ PowerSchool is the student data information system required by DPI for use in North Carolina schools. In 2020, after three years of advocacy by CSE and other civil rights organizations, DPI updated the database fields so that students' affirmed names could be entered, and so the “legal name” and “gender” fields wouldn't automatically out transgender students to anyone using the database. However, they provided no consistent statewide guidance around this change, and privacy violations through PowerSchool still occur regularly in some districts.

code of ethics compels me to have my primary obligation to the students and to implement evidenced-based interventions. All the evidence shows that when a trans student is given the chance to be supported in their journey by having adults recognize their preferred names and pronouns, this decreases anxiety, depression, and suicide ideation. Please follow the research when making decisions about policy.

Social worker (SNC66):

As an outpatient social worker that meets with students after school, I have seen SB49 negatively impact many of my clients. About half of my population is transgender. Many of my students have come into session very upset and feeling discriminated against because their teachers and administrators have stopped respecting their pronouns and correct names, and their emails have been converted back to their dead/given names. To make it short, SB49 has made LGBTQIA+ childrens' lives harder. Additionally, it is disgusting and frustrating that as a social worker/therapist, SB49 has also made my work harder. My LGBTQIA+ teens do not need more stressors than they already have . . . and thanks to this bill, their stressors have significantly increased.

Given the sweeping, harsh nature of these outing requirements, local school systems and administrators have implemented them in wildly uneven fashions. Some school systems, recognizing the harms to students, have chosen to not enforce the mandates that conflict with Title IX.²⁵ But others have interpreted these provisions in ways that amplify the harm to LGBTQ students. For instance, some schools have interpreted the name change notification policy as requiring parental permission.²⁶ Others have only applied the notification policy to gender nonconforming students and/or refused to honor a child's name or pronoun change even with parental approval.²⁷

²⁵ Tammy Grubb, [NC School Board Takes Stand Against Parents' Bill of Rights to Protect LGBTQ Students](#), The News & Observer, Jan. 19, 2024.

²⁶ See, e.g., Wake County Schools, [Wake County transgender student opposes NC Parents' Bill of Rights](#), The News & Observer, Sept. 19, 2023 (Cary High School (CHS) student Rowan Rusztowicz telling Wake County School Board that CHS teachers were requiring gender non-conforming students obtain parental permission before changing their name).

²⁷ Emily Walkenhorst, [New NC Law on Parents and Schools Begins Shaky Rollout. Opponents and Supporters Aren't Happy](#), WRAL News, Jan. 8, 2024; see also North Carolina Coalition for Charter Schools, Model Policies, Parents' Bill of Rights, Notifications Regarding Student Health, Sept. 9, 2023, Appendix G ("The school shall notify a child's parent before changing the name or pronouns used for a child, either by the school's personnel or in the student's records. This policy does not apply to common nicknames or shortened versions of a child's first or middle name. (Such as using 'Rob' for 'Robert,' or 'Jane' for a child named 'Sarah Jane.')").

Chapel Hill-Carrboro School Board Member Mike Sharp²⁸:

What I'm hearing is that we're all in agreement on our feelings on this. I think a logical next step then would be to send this back to the policy committee with a clear directive from us that says: take out the parts of this that are harmful to children, rewrite it, ignore whether you're breaking SB 49.

Board of Education member (A77):

The Parents' Bill of Rights law creates a hostile learning environment where staff are now required by the PBR law to immediately "out" such students who request a name or pronoun change to their parents, without exception for the safety or concerns of the student. Even in somewhat careful practice, this translates into a situation whereby staff must inform the student that if they wish to change their preferred pronoun or name to anything other than what is on official school record, even if just informally, then their parents must be notified. In these cases, the student may have the opportunity to withdraw their request, but the stigma has already occurred and the hostile environment already created. The environment shifts from one that is supportive and non-discriminatory, to one that is hostile toward their personal identity.

In many school districts, the law may be interpreted that if the name change request is not related to gender and simply a shortening of a name or a generally accepted nick-name to that on official record, then it is not necessary to notify parents. This practice in itself is discriminatory. It creates an environment where only transgender student name or pronoun change requests mandate parental notification, while cisgender student requests are not required for parental notification. Again, this type of discriminatory practice creates a hostile learning environment where gender fluid students are not allowed to have their identity safely and respectfully supported, in contrast to their cisgender, non-gender fluid peers.

Regardless of the approach taken, this outing requirement imposes a logistical nightmare on schools, especially those hoping to follow the law's terms literally. For instance, and in contrast to the North Carolina Coalition for Charter Schools' model policy discussed in footnote 20 above, the Wake County Public School System instructed staff that "schools are now required to notify parents prior to any changes in the names or

²⁸ Brighton McConnell, [CHCCS Board of Ed Cites Discrimination, Rejects Language in New NC 'Parents' Bill of Rights' Policy](#), Chapelboro.com, Nov. 14, 2023.

pronouns used to refer to students by school personnel or in student records.”²⁹ This includes each time Joseph wishes to go by Joe and Elizabeth wishes to go by Liz³⁰ in this system serving 160,000 students.³¹

Often these administrative hurdles further harm already marginalized students:

Parent of high school student (P24):

At my son's school, a teacher instructed the kids that their gender had to match what was listed in Powerschool. This interpretation upset a lot of his trans friends, as the Powerpoint slide the teacher presented on the matter did not indicate that it was the student’s choice. It also did not recognize that some parents had already contacted the school to tell them they knew of their child’s new gender but had not updated Powerschool. The explanation seemed to indicate that a student must have Powerschool changed in order to have their gender recognized. In addition, the Powerpoint slide did not account for non-binary students.

Parent and school staff member (PSS99):

I am the parent of 4 children in [redacted], and I work in the office of an elementary school in the same district. I have helped many families in our district over the last 2 years to navigate the system to get their child’s preferred name in PowerSchool and their school email addresses updated with their preferred name. On a phone call at the end of August 2023, our district’s executive director of IT refused to change any additional email addresses even with parental consent and stated the reason as needing further clarification from the superintendent following SB49. I did not get a resolution for 11 days. I felt frustrated by the misinterpretation of the law and angry that these students had to continue using email addresses and computer logins with their deadname.

Parent and high school educator (PE33):

I’m the advisor of the yearbook. Typically I sent a form out to the whole school (students & staff) asking for what name they want printed in the yearbook. The majority of these are shortened versions of a student's name/nicknames. I cannot do that this year because of SB49. This results in the yearbook staff not being able to accurately identify who a student is because they know kids by their nicknames instead of their given names.

²⁹ Wake County Public Schools, [Guidance on Student Name and Pronoun Changes](#), Nov. 15, 2023 (emphasis omitted).

³⁰ *Id.*

³¹ US News and World Report, [Overview of Wake County Schools](#).

This has made my job and the job of my yearbook staff significantly more difficult to the point that I can't teach accurate journalistic reporting.

C. LGBTQ students face new barriers in accessing health and mental health support.

Schools have also begun limiting the ability of school health care providers to assist students with challenges they face. Under SBE's and DPI's leadership, schools now require parental consent before they will provide students with a survey or evaluation assessing their "[m]ental or psychological problems[.]"³² Similarly, schools notify parents before administering "any student well-being questionnaire or health screening form" to kindergarteners through third graders.³³ School personnel also must not "discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being."³⁴ This prohibition on discouraging notification has no exception or allowance for students facing physical or psychological abuse at home.³⁵

Schools give away much of their responsibility to protect and assist students by following these mandates. Schools are stymied in providing timely, appropriate responses to emergency situations. They are limited in their ability to take into account the fact that many physical and psychological threats to student well-being unfortunately originate in their homes. Mechanically following these mandates does not respect student privacy. And, in following them, schools cede crucial means of better understanding how to make their classrooms and hallways more supportive for all students. In so doing, schools place their nurses, counselors, and social workers in the untenable position of choosing between their professional codes of ethics, which prioritize the health and safety of students³⁶ and which

³² N.C. Gen. Stat. §§ 115C-76.65(a)(2)(b), (c).

³³ N.C. Gen. Stat. § 115C-76.45(a)(3).

³⁴ N.C. Gen. Stat. § 115C-76.45(e).

³⁵ *Id.*

³⁶ See National Association of Social Workers, Code of Ethics, [Social Workers' Ethical Responsibilities to the Broader Society](#) § 6.04(d) (2021) ("Social workers should act to prevent and eliminate . . . discrimination against any person, group, or class on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical ability."); National Association of School Nurses, [Code of Ethics](#) (2021) ("School nurses promote equitable treatment of all students, regardless of health, race, gender, socio-economic status, culture, age, sexual orientation, . . . gender identity, ability, or religion."); American School Counselor Association, [Ethical Standards for School Counselors](#) (2022) ("Advocate with and on behalf of students to ensure they remain safe at home, in their communities and at school. A high standard of care includes determining what information is shared with parents/guardians and when information creates an unsafe environment[.]").

they are bound to follow by other provisions in North Carolina law,³⁷ and compliance with SB49.

The harms of these mandates will fall disproportionately on LGBTQ students. LGBTQ youth are more than four times as likely to attempt suicide than their straight peers.³⁸ A more stressful school environment increases LGBTQ student suicide attempts as well as depression and absenteeism.³⁹ And, of course, not all parents are supportive of LGBTQ children.⁴⁰

Middle school counselor (SNC68):

I am a school counselor, a parent of a student, as well as a licensed clinical mental health counselor. I am also a member of the suicide prevention and threat assessment leadership team and a lead on one of our crisis response teams. I am deeply concerned about the impact on student mental health on implementing SB 49.

We are currently in a mental health crisis in this country. Suicide has surpassed homicide and is now the second leading cause of death for teenagers. We have seen this firsthand in our county. All of the evidence and research shows that a comprehensive prevention strategy is the most effective way to decrease suicide rates. According to the Suicide Prevention Resource Center, an important part of a comprehensive approach is identifying those students at risk, responding effectively to those in crisis, and increasing help-seeking.

The requirement to seek permission prior to conducting a suicide or threat assessment will create barriers to evidence-based interventions to support students and keep them alive. It is already in our county's protocol to inform a guardian when we speak to a student about suicide or conduct a suicide assessment. We are already working with parents and collaborating to provide the support needed.

³⁷ See N.C. Gen. Stat. § 115C-316.1(a)(4) (“Direct services shall consist of . . . [p]erforming other student services listed in the Department of Public Instruction school counselor job description[.]”); [NCDPI School Counselor Job Description](#), § 2.15 (requiring school counselors to “[a]dhere[] to laws, policies, procedures, and ethical standards of the school counseling profession”).

³⁸ The Trevor Project, [Facts About Suicide Among LGBTQ+ Young People](#), Dec. 15, 2021.

³⁹ The Trevor Project, [2023 U.S. National Survey on the Mental Health of LGBTQ Young People](#).

⁴⁰ See Soon Kyu Choi, Bianca D.M. Wilson, Jama Shelton & Gary Gates, [Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness](#), 2015 (identifying family rejection or being forced out by parents as the most prevalent reason for homelessness among LGBTQ youth).

It is part of my job description and my ethical standards to advocate for anti-bias[ed], equitable policies and procedures and provide effective, evidence-based, culturally responsive interventions to ALL students. Not all of our parents are available on an emergency basis, and requiring permission before we conduct our assessments will put a population of students at a disadvantage. All of our students deserve the same access to suicide prevention.

Board of Education member (A77):

In times of mental health crisis, students may report their feelings toward self-harm to trusted school staff. Such students in crisis are served in our schools by School Counselors and School Social Workers. For the school staff to adequately assess the mental health needs of the student in crisis, they use professional standards and best practices called for by the NC General Assembly and NC Department of Public Instruction (NC DPI), such as administering the Columbia-Suicide Severity Rating Scale (C-SSRS) or similar Suicide Protocol mandated by the NC DPI Mental Health Plan. This standardized assessment, utilized in our school system and more broadly used in schools across our state, is now considered under [SB49] to be a “protected topic survey” which now requires parental “opt-in” prior to administering such a survey. This creates a delay in serving the student in crisis, especially when parents are not reachable during the work day . . . The law grants no exception to the law’s “parental opt-in” mandate for first responders administering the required NC DPI suicide assessment. In the case of a mental health crisis, administering such suicide assessments can be considered a first step in providing life care to a minor.

. . .

The NC Parents’ Bill of Rights [legal] mandate for “parental opt-in” for mental health surveys also creates a hostile environment for the student who may be struggling with a mental health crisis because of abusive or negligent parents. In effect, communicating to the student that needed services cannot be provided until the very parents, who may be the root cause of the mental health crisis, are contacted to opt-in to the Columbia-Suicide Severity Rating Scale. This creates a stigma in the school community towards students struggling with mental health issues originating at home, that they are not safe to seek assistance from trusted school professionals.

. . .

[This outing mandate] creates a hostile environment for students who may identify as transgender or as members of the LGBTQ community, who have the highest rates of suicidality among teenage youth in our schools. Often the root cause of their mental health struggle may arise from unsupportive or abusive parents. The PBR law creates a very dangerous and hostile environment for such youth in our schools. Effectively communicating to these students[] that their unsupportive or potentially abusive parents must be notified before mental health supports can be provided by trusted school staff . . . This may also effectively “out” the student before the student feels safe enough to communicate their status to their parents. This creates a hostile environment for transgender and LGBTQ students by denying them safe and confidential mental health supports in the school environment. Such a hostile environment may prevent such students from seeking very critical mental health support in a time of crisis.

School social worker (SNC67):

As a clinical licensed social worker working in rural NC, without SB49, we already had barriers around LGBTQIA+ clients in Appalachia. With SB49 and working in the schools, this has caused barriers surrounding access to treatment. As a social worker, I have a Code of Ethics that I need to abide by and that guide my practice. SB49 is directly opposite of what a clinical social worker should be doing. My ethics express that we need to respect our client's self-determination, be culturally competent, engage in social justice, and respect the dignity and worth of a person. As well as maintain a client’s confidentiality. It is unfortunate that I am experiencing barriers to providing behavioral health services in schools because I refuse to go against my ethics and break a client’s confidentiality. This bill is incredibly scary and does not take into account many statistics surrounding the LGBTQIA+ community, such as increased suicide and self-harm rates when they are outed in their community.

Middle school counselor (SNC68):

Our district has been conducting the Panorama Student Survey for several years now to get student voice in the climate of the school. It is used to set goals in many (if not all) school improvement plans. Some of the data we have found important are [presence of] caring adults (do students believe there are adults in the building that care about them), school safety, and sense of belonging, which are directly correlated to student success. Less than 50% of students felt like they belonged in our district schools last year,

and our school stands at 45% who feel no sense of belonging. Without current data we will not be able to assess the challenges and implement whole school programs to address the disparity.

Diversity and inclusion is also a topic we address. This asks if the school talks about different cultures, and [if] the student body and teachers treat different cultures fairly. Without this survey, there will be no way to know if students feel seen and appreciated for being different or if they are being targeted. These surveys are anonymous; we get aggregated data by gender, grade level, race, learning status (special ed or general ed) but we do not know who answered what, which allows students to be more honest.

Response rates need to be in the 75-85% range to have valid data. With the parental permission requirement in place, we had 12% of our students get permission to take the test this year. There is talk of the survey going away all together, because we pay for it. School climate is vital to student success and this data gives us directions to move. Because of this law we cannot even conduct school wide surveys and drill down in the data and find out which populations feel unseen, unvalued, unsafe. The law is quieting student voices, particularly minority voices. It is disrupting our ability to reach our school improvement goals.

Parent of high school student (P24):

A school board member is requesting [the health survey parental permission] be extended through 12th grade. This has caused concern amongst school nurses about poorer health outcomes, due to permission slips going missing or ignored. Kids' hearing and vision screenings were a particular concern overall with SB49, especially among non-native English-speaking parents, who may not always be provided with translations.

Schools' mechanical adherence to SB49's restrictions on providing services to students is already wreaking havoc on programs they use to assist students. First, the lack of clarity around the scope of SB49 is causing school districts to revisit long-standing programs. For instance, in September 2023, the Orange County and Chapel Hill-Carrboro school systems stopped their Safe Touch program out of fear it ran afoul of SB49.⁴¹ Safe Touch has partnered with these school systems "to bring children information to keep them safer from sexual abuse" for 40 years.⁴² Though the schools ultimately concluded

⁴¹ Sinclair Holian, [NC's Parents Bill of Rights Law Delays Longtime Child Sexual Abuse Prevention Program](#), The News & Observer, Dec. 8, 2023.

⁴² *Id.*

that Safe Touch comported with SB49, the program had not re-started as of December 2023.⁴³

In addition, the parental consent requirements have harmed schools' ability to provide students necessary services and understand what is necessary to protect and support all students. They have led the state to indefinitely postpone the annual North Carolina Youth Tobacco Survey, which measures tobacco use amongst youth and helps to guide policy on point.⁴⁴ The experience of the Charlotte-Mecklenburg School system (CMS) further illustrates these devastating harms:

- “CMS sought permission for more than 58,000 students to take sex education, formally known as reproductive health and safety education. More than 36,000 families, or almost 63%, didn't respond. Of those who did, 94% consented to their children's participation.”⁴⁵
- “Results for vision, hearing and dental screenings were even more dramatic, with response rates below 10%. That meant more than 74,000 students couldn't participate in one or more of those screenings because their families hadn't opted in.”⁴⁶
- “The district also asked for permission to do suicide prevention screening for almost 21,000 students and depression screening for about 10,500. Fewer than 1% of parents responded to either request, the CMS numbers show. But more than 80% of those who did respond said yes.”⁴⁷

D. LGBTQ students are walled off from supportive educators.

Under SBE's and DPI's leadership, educators “may be subject to disciplinary action” if they “encourage[], coerce[], or attempt[] to encourage or coerce a child to withhold information from his or her parent.”⁴⁸ This threat of discipline applies irrespective of whether students convey to educators that their parents pose a danger to them. Moreover, what disciplinary action school staff are subject to for protecting students is unclear. Given its blanket prohibition on withholding information and open-ended potential punishment, this mandate also drives a wedge between LGBTQ students and supportive teachers and administrators.

⁴³ *Id.*

⁴⁴ Luciana Perez Uribe Guinassi, [Youth Tobacco Survey Helps Guide NC Policy. Will Parents' Bill of Rights Delay It?](#), The News & Observer, Jan. 23, 2024.

⁴⁵ Ann Doss, Helms, [Most CMS Families Aren't Responding to 'Parent Rights' Permission Requests](#), WFAE, Jan. 3, 2024.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ N.C. Gen. Stat. § 114A-20.

High school student (S89):

My name is [redacted], and I am a transgender student. I have seen SB49 implemented in many ways. Here is my main example: my teacher was talking about some changes that other teachers may be participating in such as “outing” LGBTQ+ students to their parents or classmates; this includes deadnames and things. They were expressing how their classroom would always be a safe space, and they said they were going to quit if they were required to “out” anyone. This was surprising to hear as the schools I've been in have always been supportive and had many helplines and opportunit[ies] to help you find yourself and have safe places, especially regarding LGBTQ+ people. SB49 just makes me worried about my future.

High School Student (S95):

This bill will negatively affect [me] and so many of my friends. It stops us from speaking in places where we should feel safe, it means that when we talk about our identities our [Gay Straight Alliance] teacher leader has to step out of the room so that they have plausible deniability. While I personally am safe, this bill means that my friends, some of whom I've had to offer my home to should their parents ever find out about their identity, are now losing their one safe place to express themselves. They already live in fear, and now they are terrified of teachers, authority figures who they should be able to trust, ratting them out to their parents. It keeps them silent, it stops them from being able to express themselves, and as I'm sure you know from the statistics, that means I'm much more likely to lose friends to suicide.

Parent of high school student (P24):

Teachers were told to never encourage children to withhold information from their parents, which I believed was setting a dangerous precedent for children who could be a[t] risk. If a child ever told me that they had information that might cause their parents to harm them, I would encourage the child not to do anything that might put themselves in danger, even if that meant withholding the dangerous information. The instructions given to my school district's staff did not account for this safeguarding scenario. The initial correspondence also did not account for situations when the staff member themselves should not provide information to parents when the student believed it could increase their risk at home.

Parent and school staff member (PSS99):

Our school district and many others across the state have policies or regulations that support youth who may be in various stages of transition related to gender identity or sexual orientation. Often, as students navigate these transitions, they may express themselves in trusted supportive environments, such as the school. This expression can take many forms, but one very important form is through a preferred pronoun or name that may be different than that presented on birth certificates or on official school records. As these youth navigate this critical time of finding confidence in their identity, they seek supportive environments free from discrimination or hostility.

The school board policies and regulations that support these youth provide guidance to staff on how to respectfully and carefully provide a learning environment that is safe and inclusive. It is understood in these policies, that in many cases, students have not confided their identity or sexual orientation to their parents, because their parents are unsupportive, neglectful, or abusive because of negative parental perspectives about gender identity or sexual orientation. The supportive local school board policies still encourage the trained School Counselors or School Social Workers to respectfully work with the student to safely involve their families in their gender identity or sexual orientation transitions. However, the safety and rights of the student guide the pace of that conversation with parents.

I had a 4th grade teacher at my school reach out to me for guidance on how to handle questions from her students after one of them announced a new name and gender identity. As the school's designated LGBTQIA+ Liaison, I provided the teacher with information on how to proceed. However, the school counselor (who had also been cc'd on the email) strongly disagreed with me being included in the conversation and ultimately called the parent to notify them without discussing it with the student or teacher. I was very upset that the counselor did this and saddened that a person who should be the most supportive of our students is not a safe person for them to come out to.

E. Transgender students are barred from participating in athletics.

Under SBE's and DPI's leadership, schools have also banned transgender young women from participating in school athletics. Interscholastic and intramural teams now

must be “expressly designated” as male, female, or coed.⁴⁹ Athletic teams designated for young women “shall not be open to students of the male sex.”⁵⁰ (Though this language would seem to allow transgender young men to play on the men’s team, as discussed below this has not always been the case.) “[A] student’s sex” is determined “solely on the student’s reproductive biology and genetics at birth.”⁵¹

Specifically, the SBE has already proposed new rules implementing this legislation and is expected to formally adopt them in March.⁵² These rules will apply not just to traditional public schools,⁵³ but also charter schools⁵⁴ as well as any private schools playing against a member of or that is itself a member of the North Carolina High School Athletics Association (NCHSAA).⁵⁵

These new exclusionary policies are already negatively impacting transgender student athletes in North Carolina:

Parent of high school athlete (P27):

Participating in sports is very important to my transgender child’s mental health and provides a community of inclusion. He played three seasons on the women’s tennis team and one on the women’s swim team. Last fall he started testosterone treatment, and in accordance with NCHSAA policy applied and was approved to compete for the men’s team last year. The school and the team were very supportive and our school has had several prior transgender athletes as well. This year when we submitted the recertification paperwork to participate [. . .] the athletic director was given unclear and conflicting information. Now, he’s been told as of October 30th, all athletes must participate as their assigned gender at birth. This does not seem consistent with the bill banning transgender participation in women’s

⁴⁹ N.C. Gen. Stat. § 115C-407.59(a)(1).

⁵⁰ N.C. Gen. Stat. § 115C-407.59(a)(2).

⁵¹ N.C. Gen. Stat. § 115C-407.59(a)(3).

⁵² Laura Browne, [State Board Review Post-Pandemic Recovery, Approves Three-Year Graduation Pathway](#), EdNC, Jan. 5, 2024.

⁵³ *Id.*; see also N.C. Gen. Stat. § 115C-407.59 (applying to “public school units”).

⁵⁴ See N.C. Gen. Stat. § 115C-218.75(m) (“A charter school organizing athletic teams . . . to participate in interscholastic or intramural athletic activities shall do so in accordance with [SBE’s rules governing interscholastic athletic activities].”).

⁵⁵ See N.C. Gen. Stat. §§ 115C-548.1, 115C-556.1. The NCHSAA “is a nonprofit corporation . . . formed for the educational purpose of coordinating athletic activities among high schools in North Carolina[.]” [Memorandum of Understanding Between the North Carolina State Board of Education and the North Carolina High School Athletics Association Regarding the Conduct of High School Interscholastic Athletics](#), March 2022. It is supervised by the SBE. *Id.*

sports or their own policy on medication use last year. Again my child will have to choose between participating in sports or being seen as who he is.

Parent (P22):

HB574 has been directly impactful. Our daughter was looking forward to swimming for [redacted] as a freshman and making new friends. Prior to this year she swam at the local swim club where she was friends with many of the other swimmers, many of whom didn't know she was trans. Naturally, some of those friends were in her class or already in high school and it forced her to have an explanation for why she wasn't swimming for the high school, since she wasn't comfortable telling many of them the real reason. Moreover, she is denied the ability to represent her school in swimming, something that would have been a point of pride.

Luckily, the legislation doesn't apply to swim clubs so she joined a competitive swim club but that adds a good hour of driving to drop off & pick up, several days a week. As parents of a trans kid swimming for a club, we respect our daughter's desire to let only people know whom she feels comfortable with. Many people are hostile towards trans people, and it can be hard to know who they are at first. Worse, that hostility has now been legitimized and emboldened by this legislature. That creates a safety issue for us as we cannot be open about our thoughts and experiences about the high school swim team. And at the club our daughter swims at, it's not unusual for the high school swim team to come up as a topic of conversation.

All things considered, our daughter is still getting to swim and make friends, which is great, but there's also a significant psychological impact in terms of her feeling that the government is telling her she's a second-class citizen, that there's something wrong with her. The day she found out the legislation passed was a dark day.

High school student (S89):

Honestly, SB49 makes me scared to sign up for sports, it is hard enough being plus-sized trying out for sports. SB49 just makes me worried about my future.

High school student (S92):

Many of my plans for this year[] I'd been waiting for ha[ve] been canceled by transphobic bigots: I intended to share my truth with my coaches to switch to the team aligned with my true gender.

III. North Carolina’s educational establishment features key supporters of SB49 and HB574 and has failed to protect LGBTQ students following those bills’ passage.

“The general supervision and administration of the free public school system” in North Carolina is vested “in the State Board of Education.”⁵⁶ SBE “establish[es] all needed rules and regulations for the system of free public schools[.]”⁵⁷ This includes setting policy on everything from teacher qualifications to course content.⁵⁸ SBE “consists of the Lieutenant Governor, the Treasurer and eleven members appointed by the Governor for eight-year, overlapping terms, subject to confirmation by the General Assembly.”⁵⁹

DPI “is charged with implementing the state’s public school laws for pre-kindergarten through 12th grade public schools[.]”⁶⁰ It does so “at the direction of SBE and the Superintendent of Public Instruction (Superintendent).”⁶¹ The Superintendent is an elected position currently occupied by Catherine Truitt.⁶²

SBE, DPI, and/or the Superintendent have the power to engage in ruling-making as well as issue declaratory rulings and uniform guidance regarding state educators’ responsibilities pursuant to federal and state law.⁶³

SBE, DPI, and the Superintendent have failed in their obligations to provide educators with guidance on whether and how to implement SB49 and HB574 in light of their superseding Title IX obligations as well as state anti-bullying provisions. This likely owes to the compromised nature of these entities, whose members have been more likely to fan the flames of intolerance than promote welcoming school environments for all. Regardless of their intent, these entities’ failure to act have caused confusion and exacerbated the hostile environment fostered by SB49 and HB574.

⁵⁶ N.C. Gen. Stat. § 115C-12.

⁵⁷ *Id.*

⁵⁸ DPI, [About DPI: State Board of Education](#).

⁵⁹ DPI, [About DPI: State Board of Education Members](#).

⁶⁰ DPI, [About DPI](#).

⁶¹ *Id.*

⁶² DPI, [About DPI: State Superintendent of Public Instruction](#).

⁶³ *See generally* N.C. Gen. Stat. §§ 115C-12, 115C-21(a)(8), 115C-21(b)(6), 115C-276(g), 150B-4.

A. North Carolina’s educational leadership has been more likely to single out LGBTQ students for attack than for support.

1. SBE

As noted above, North Carolina’s lieutenant governor is a member of SBE. Indeed, the lieutenant governor is the highest-ranking state official serving on SBE. The current lieutenant governor, Mark Robinson, is well-known for his homophobic and transphobic comments. Even more importantly, he is in many ways the intellectual godfather of SB49 and HB574.⁶⁴ His efforts to marginalize LGBTQ students, unfortunately, have been supported by other members of SBE.

Lieutenant Governor Robinson’s homophobic and transphobic comments are legion. He has questioned the existence of LGBTQ individuals in brutal, hurtful ways.⁶⁵ Particularly pertinent here are comments making plain his belief that exposing students to the fact that there are LGBTQ people, even in an age appropriate fashion, is harmful. Indeed, the Lieutenant Governor analogizes this to exposing children to pornography:

There’s no reason anybody anywhere in America should be telling any child about transgenderism, homosexuality, any of that filth.⁶⁶

I don’t want my grandkids watching that television, because I don’t want to have to explain to my grandkids why two men are kissing. And I don’t care what anybody thinks of that. Get mad at me if you want to. No child got no business seeing no two men kiss. If they did God would’ve made it that way. He didn’t.⁶⁷

⁶⁴ *Infra* notes 72-82 and accompanying text.

⁶⁵ See, e.g., [Lt. Gov. Mark Robinson speaks at Berean Baptist Church](#), Winston-Salem Journal, Nov. 16, 2021, at 2:25:15 (“Everything that God made, from the foul odor of what the cow left behind, to the decaying body of every living creature, to the maggots that eat those dead bodies, to the flies that fly around what the cow left, God made all those things for a purpose. Will somebody please explain to me the purpose of homosexuality?”); Joe Killian, [In appeals court case, a political fight over transgender identity and health care](#), NC Newline, Jan. 30, 2023 (“I don’t care how much you cut yourself up, drug yourself up and dress yourself up, you still either one of two things — you’re either a man or a woman. You might be a cut up, dressed up, drugged up ugly man or woman, but you still a man or a woman, and I don’t care who doesn’t like it.”).

⁶⁶ Joe Bruno and Andrew McMillan, [Lt. Gov. Mark Robinson makes anti-LGBTQ comments during sermon at Mooresville church](#), WSOC-TV, Mar. 23, 2023.

⁶⁷ [Lt. Gov. Mark Robinson speaks at Berean Baptist Church](#), Winston-Salem Journal, Nov. 16, 2021, at 2:23:57

We can't even teach these children how to read, because you're too busy social engineering. . . . Trying to teach these children about homosexuality and transgenderism. That ain't got no place in no school.⁶⁸

Not only can we not teach them [children] to read on a grade level, we've got them sitting up in classrooms with teachers looking at them saying 'You know, you really don't have to be a boy or a girl. You can be whatever you feel.'⁶⁹

These so-called educators that will tell me a filthy book with pornographic images in it, just because it won some award, so it's an award-winning book. Let me tell you something, the pornographers give each other awards too. I bet the dope dealers and the pimps probably give each other awards too. Just because it won your little award doesn't mean it's something that should be shared with these children. We are going to continue to stand up and call it what it is. Because the reason why it's there, the reason why that pornography is in that school, is because God and his wisdom has been ushered out.⁷⁰

These words are harmful enough in and of themselves, especially coming from the second-highest official in the state. Even more so given that the Lieutenant Governor is the highest ranking state official serving on the Board establishing "all needed [public school] rules and regulations[.]"⁷¹

But Lieutenant Governor Robinson further weaponized his vile rhetoric by convening a so-called Fairness and Accountability in the Classroom for Teachers and Students (FACTS) task force. The FACTS task force prepared a report entitled *Indoctrination in Public Education*, which, among other things, sought to lasso Lieutenant Governor Robinson's homophobic and transphobic rantings into a call for legislative action.⁷²

Indeed, the FACTS report summary reads as a dress rehearsal for SB49 and HB574. The report inveighs against the "sexualization of kids," which, according to the summary, "may involve coercing students into affirming ideas about sex and gender that their parents

⁶⁸ *Id.* at 2:06:51.

⁶⁹ *Id.* at 2:03:45.

⁷⁰ *Id.* at 2:05:34.

⁷¹ N.C. Gen. Stat. § 115C-12.

⁷² The Office of Lieutenant Governor Mark Robinson, [Indoctrination in North Carolina Public Education: Report Summary](#), Aug. 24, 2021 (hereinafter "Robinson, *Indoctrination in North Carolina Public Education*").

do not wish for them to be taught about.”⁷³ It also claims that “[i]n some instances school administration instructed educators to lie to parents about their children and to keep issues regarding their child’s sexual identity and preference hidden from the parent.”⁷⁴

Though, among other things, the report exhibits researcher bias, selection bias in supporting evidence, misrepresentation of data, lack of transparency in data outreach and collection, and a lack of definition of key terms like indoctrination,⁷⁵ legislators have employed FACTS as a justification for anti-LGBTQ legislation. For example, Lieutenant Governor Robinson cited the then-forthcoming report as a justification for legislation at the unveiling of an “anti-indoctrination” proposal in 2021.⁷⁶ And SB49’s mandate that educators not “coerce” students into withholding information from parents, regardless of the consequences of disclosure for the student,⁷⁷ parrots the “findings” in the FACTS report summary.⁷⁸ Perhaps most tellingly, the Lieutenant Governor’s rhetoric popped up in the debate on both SB49 and HB574:

State Senator Kevin Corbin speaking on SB49⁷⁹:

There's been a move out there to start teaching and introducing these things, sexuality to children that are in kindergarten, first grade, second grade, third grade.

State Senator Kevin Corbin speaking on HB574⁸⁰:

[I]t simply prevents biological males from playing girls sports—end of story.

This should come as no surprise. Senator Corbin, as well as State Representative David Willis and SBE member Dr. Olivia Oxendine,⁸¹ were FACTS task force members who signed off on the report.⁸²

⁷³ *Id.* at p. 11.

⁷⁴ *Id.*

⁷⁵ See generally Robinson, *Indoctrination in North Carolina Public Education*.

⁷⁶ Justin Parmenter, [“I guess she had the right skin color.” Complaints to Lt. Gov. Mark Robinson’s indoctrination portal dominated by white racial resentment](#), Notes from the Chalkboard, July 19, 2021.

⁷⁷ N.C. Gen. Stat. § 114A-20.

⁷⁸ See *supra* notes 73–74 and accompanying text.

⁷⁹ Kimberly King, [Community, lawmakers speak out as NC Republicans file anti-LGBTQ bills](#), WLOS, May 11, 2023.

⁸⁰ Greg Childress, [NC Senate approves bill to ban transgender women from playing on female sports teams](#), NC Newline, June 20, 2023.

⁸¹ SBE, [Board of Education Members](#).

⁸² Robinson, *Indoctrination in North Carolina Public Education*, p. 2.

2. Superintendent Catherine Truitt

Though less flamboyant than the Lieutenant Governor, Superintendent Catherine Truitt has been no less consistent in her marginalization of LGBTQ students. This disqualifies her from serving as the honest broker school districts need in navigating federal and state educational mandates.

The overlap between Lieutenant Governor Robinson and Superintendent Truitt on LGBTQ student rights is striking. While she avoids ranting about “filth,” she agrees with the Lieutenant Governor that transgender people do not really exist. She consistently refers to transgender women as “biological males”⁸³ and speaks consistently of “gender preference.”⁸⁴ Little wonder then that she spoke at the unveiling of the FACTS report.⁸⁵

And, instead of using her position to advocate for all North Carolina public school students, Superintendent Truitt has used it to exclude transgender kids. For example, after the SBE approved more inclusive social studies curriculum guidelines in 2021 (condemned by an as ever on-message Lieutenant Governor Robinson as “leftist indoctrination”⁸⁶), Superintendent Truitt systematically removed the term “gender identity” from them.⁸⁷ She also attacked the prevailing interpretation of Title IX in legislative testimony in support of HB574:

If we are truly to maintain a level playing field in women’s sports, biological sex must supersede gender preference. . . . We can respect individual gender preferences without reconstructing Title IX to inherently disadvantage

⁸³ See, e.g., Office of the North Carolina Superintendent of Public Instruction, [Letter to US Secretary of Education Miguel Cardona](#), May 1, 2023.

⁸⁴ See, e.g., *id.*; Brian Murphy, [Senate Panel Passes Bill to Ban Transgender Girls from Girls Sports in NC](#), WRAL News, Apr. 17, 2023.

⁸⁵ David N. Bass, [F.A.C.T.S. Task Force Releases First Report Documenting Bias, Indoctrination in Public Schools](#), The Carolina Journal, Aug. 24, 2021.

⁸⁶ [North Carolina Education Board approves new social studies rules](#), Associated Press, Feb. 5, 2021. This was controversial within the SBE, with the new curriculum guidelines only being adopted by a 7-5 vote. *Id.*

⁸⁷ Mallika Kallingal & Jamiel Lynch, [North Carolina Approves New Rules to Teach Social Studies, But There’s Controversy Over New Wording](#), CNN, Feb. 5, 2021; see also T. Keung Hui, [‘Inclusive’ or ‘divisive’? NC’s proposed social studies standards stir debate](#), The News & Observer, Jan. 7, 2021. Members of the SBE supported this removal. For instance, Board member Amy White stated that “[t]he inclusion of the word gender identity in multiple places throughout these standards is room for pause for me.” *Id.* Echoing the rhetoric of Robinson and Truitt, White stated that while, “I would be fine with the inclusion of the word gender as gender is based on science,” she could not support the inclusion of “gender identity” as “the clear scientific data suggests that human beings are born as either male or female.” *Id.*

women. But biological sex must be the basis for sporting events for our high school athletes.⁸⁸

When it comes to education policy, the lieutenant governor and superintendent are best viewed as a tag team. Lieutenant Governor Robinson yells into a megaphone from the fifty-yard line, while Superintendent Truitt more quietly, yet equally consistently, marks through efforts at inclusion with her red pen.

B. SBE and DPI have failed to protect LGBTQ students or provide guidance to North Carolina educators.

With leaders like Lieutenant Governor Robinson and Superintendent Truitt, it comes as no surprise that North Carolina’s educational establishment has proven incapable of protecting LGBTQ students’ rights. Indeed, the agencies tasked with doing so have responded to nearly a decade of infringements on student rights by repeatedly shirking their responsibilities. This is especially problematic when it comes to the newly minted SB49 and HB574, which have been interpreted in different ways across the state, illustrating the need for statewide guidance.

To start, again, DPI’s own website notes that it works with SBE and the Superintendent to “implement[] the state’s public school laws.”⁸⁹ SBE and DPI have myriad powers to assist them in carrying out this responsibility. They can adopt and administer all “needed rules and regulations.”⁹⁰ They also “shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute[.]”⁹¹

This ample authority makes SBE’s and DPI’s failure to act all the more galling. This pattern reaches back, at least, to HB2, the infamous 2016 “Bathroom Bill.”⁹² When school districts implemented HB2 in vastly different ways, families and educators sought guidance ensuring transgender students could access bathrooms consistent with their gender identity. DPI took the official position that implementation was a “local question.”⁹³ And they did not revisit this assessment even after the Fourth Circuit Court of Appeals confirmed

⁸⁸ Brian Murphy, [Senate Panel Passes Bill to Ban Transgender Girls from Girls Sports in NC](#), WRAL News, Apr. 17, 2023.

⁸⁹ DPI, [About DPI](#).

⁹⁰ N.C. Gen. Stat. §§ 115C-12, 115C-21(a)(8).

⁹¹ N.C. Gen. Stat. § 150B-4(a).

⁹² Though known by this name colloquially, the law again swept broadly in its anti-LGBTQ impact. For instance, it barred localities from adopting non-discrimination ordinances protecting the LGBTQ community. Jeff Tiberii, [Sifting Through the Facts on House Bill 2](#), WUNC, Apr. 1, 2016.

⁹³ Kelly Hinchcliffe, [NC education leaders: Transgender students' bathroom usage up to local school boards](#), WRAL News, May 9, 2016.

transgender students must receive access to restrooms consistent with their gender identity.⁹⁴

Much the same has happened in response to SB49 and HB574. On October 6, 2023, CSE wrote to SBE and DPI detailing the tension between SB49 and Title IX.⁹⁵ They responded on October 26, 2023 by throwing up their hands:

Absent a determination by USED [United States Department of Education] 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.⁹⁶

CSE again beseeched the SBE and DPI to issue guidance on how to implement SB49 consistent with Title IX, North Carolina's own LGBTQ-inclusive anti-bullying statute,⁹⁷ and the state's Standards of Professional Conduct for educators⁹⁸ on November 13, 2023.⁹⁹ Neither responded.

What followed was as predictable as it was unfortunate: chaotic, uneven local implementation leaving administrators, educators, parents, and students nowhere to turn. In the words of one stakeholder, school systems "don't have those procedures [for implementing these new requirements] in place, or they don't hold anyone accountable to those procedures."¹⁰⁰ Stakeholders moreover do not understand the consequences of adhering to these dubious state laws and, beyond this, fear they will face more pressure from further restrictions of LGBTQ student rights.

Parent of high school student (P24):

When I contacted the district's Title IX coordinator to ask why SB49 had been implemented without the policy process, including Title IX review, taking place first, she said that they were doing the best they could and that she could only investigate specific instances of misunderstandings. When

⁹⁴ *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 593 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 2878 (2021).

⁹⁵ October 6, 2023 Letter from CSE to Allison Schafer, General Counsel of SBE and DPI, Appendix B.

⁹⁶ October 26, 2023 Email Communication from Allison Schafer, General Counsel of SBE and DPI, to Craig White, CSE, Appendix C.

⁹⁷ *See generally* N.C. Gen. Stat. § 115C-407.15.

⁹⁸ *See generally* 16 N.C. Admin. Code 06C .0602.

⁹⁹ November 13, 2023 Letter from CSE to Allison Schafer, General Counsel of SBE and DPI, Appendix D.

¹⁰⁰ Emily Walkenhorst, [New NC Law on Parents and Schools Begins Shaky Rollout. Opponents and Supporters Aren't Happy](#), WRAL News, Jan. 8, 2024.

asked about her responsibility to halt the implementation if it was not in compliance with federal law, she said that she did not work for the federal government. She said she worked for the state. I asked her to complete a Title IX review of any policies related to SB49 and to provide me with a copy. So far, despite multiple requests made for this review and multiple weeks passing, she has not provided a Title IX review to me. The school board did eventually draft policies related to SB49. Some of them have been approved, but currently some are still under review.

...

SB49 was implemented at my son's school district before the school board drafted and approved an official policy that could be reviewed by the Title IX coordinator. Since the policy did not officially exist yet, its ad hoc implementation was a chaotic interpretation by different teachers, principals, and administrators.

...

I have no doubt this school board will use SB49 as permission to create even more discriminatory policies, as they are already starting to do. One school board member proposed a transgender bathroom ban recently, barring transgender people from the bathroom of their chosen gender. More of these types of discriminatory initiatives will surely be in our future if SB49 is allowed to stand. SB49 provides them with the state-sanctioned license to discriminate in all sorts of inventive new ways that endanger some of our most vulnerable students.

High school student (S90):

In the leadership circles I run in, club advisors (educators) were well aware of SB49 before it passed. However, no one was making an effort to inform the general population of students about the anti-LGBTQ harm SB49 was designed to carry out . . . When I tried to push an informative effort—after hours of drafting a policy overview email and announcement—I was immediately shut down. It was extremely disappointing to witness educators' fear of parental pushback outweigh the genuine harm SB49 has on LGBTQ students. I don't want to be a student in the type of school where students are silenced in their pursuit of equity and educators are legally locked into a timid and complacent position. When the 'public' in public

education encompasses LGBTQ students, schools should have every right to foundationally respect and serve those students.

Board of Education member (A77):

Our school board is put in the position of having to reconcile portions of the Parents' Bill of Rights that could inherently create discriminatory actions based on sexual orientation or gender identity, with federal law Title IX that prevents such discrimination in the school setting for students or employees. Because the state law is inconsistent with federal law, our school board and those across our state run the risk of penalty or loss of funding, either from the state government or federal government, or both. This conflict is inevitable because the requirements of the state PBR law cannot be implemented operationally without violating federal civil rights law such as Title IX.

...

Provisions in Title IX can strip a teacher of their licensure and the school district of federal funds, if they violate the tenets of that federal law. Because the PBR law was made effective before local school boards could discern policy to guide its implementation, it became incumbent for individual staff to discern how to abide by the law. This created a sincerely conflicted environment for our staff, where some may have felt compelled to abide by the more discriminatory portions for fear of repercussion, while others may have felt compelled to not abide by the state law because of its obvious conflicts with Title IX. Transgender and LGBTQ students and staff could effectively face varying interpretations of the law, and thus varying personal consequences, depending on the personal interpretations of the local school building authorities or community members with which they were interacting at the time.

...

Our school board and all school boards across the state have mandated policy recognizing that collectively and individually, all members of the school board must adhere to a code of ethics as required by NC G.S. 160A-86 and G.S. 115C-47(57). Most notably that legal code of ethics mandates that we obey all applicable federal and state laws regarding official actions taken as a board member. Therefore, again, any conflict between PBR law and federal civil rights law (such as outlined previously in

this document) prevents us from fully abiding by our own code of ethics as required by state law.

IV. SBE and DPI have created a hostile educational environment for LGBTQ students in North Carolina’s public schools in violation of Title IX.

As recipients of federal funding, North Carolina public schools must comply with Title IX.¹⁰¹ Title IX trumps state laws with contrary mandates,¹⁰² and prohibits discrimination against any student “on the basis of sex.”¹⁰³ The Supreme Court has interpreted prohibitions on sex discrimination to forbid discrimination on the basis of LGBTQ status.¹⁰⁴

Title IX aims to eliminate discrimination, root and branch. Accordingly, it defines discrimination capaciously to include any “disparate provision of programs, aid, benefits or services or inequitable application of rules or sanctions.”¹⁰⁵ Impermissible sex discrimination includes creating or contributing to a hostile educational environment on the basis of sex.¹⁰⁶

¹⁰¹ 20 U.S.C. § 1681(a) (“No person in the United States shall, on the basis of sex, . . . be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]”). As noted at the outset, DPI is a recipient of federal educational funding. *See, e.g.*, DPI, [NCDPI Awarded \\$7.9 Million to Address Math Disparities in Rural Schools](#), Dec. 11, 2023. And, given its supervisory role in the provision of a public education in North Carolina, *see* N.C. Gen. Stat. § 115C-12 (“The general supervision and administration of the free public school system shall be vested in the State Board of Education.”), SBE is a necessary party to resolve the allegations in this complaint. *See* United States Department of Education, Office for Civil Rights, [OCR Complaint No. 11-16-1453, Letter of Findings, Oct. 14, 2016](#) (adding SBE to OCR investigation of complaint alleging, *inter alia*, Title IX violations).

¹⁰² U.S. Const. Art. VI § 2 (“[T]he laws of the United States . . . shall be the supreme Law of the Land[.]”).

¹⁰³ 20 U.S.C. § 1681(a).

¹⁰⁴ *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741 (2020) (“[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”). *Bostock* was a Title VII case, alleging sex discrimination in the workplace. *Id.* at 1738. As Title IX likewise forbids sex discrimination (albeit in the educational context), courts often “look to case law interpreting Title VII . . . in evaluating a claim brought under Title IX.” *See, e.g.*, *Jennings v. Univ. of N. Carolina*, 482 F.3d 686, 695 (4th Cir. 2007).

¹⁰⁵ *Crandell v. New York Coll. of Osteopathic Med.*, 87 F. Supp. 2d 304, 314 (S.D.N.Y. Mar. 10, 2000) (citing 45 C.F.R. § 86.31 (2000)). As noted above, some provisions of SB49 and HB574, like new barriers to health and mental health support, harm all students. But they disproportionately impact LGBTQ students, thereby violating Title IX. *See Haffer v. Temple Univ. of the Com. Sys. of Higher Educ.*, 678 F. Supp. 517, 539–40 (E.D. Pa. 1987) (conducting disparate impact analysis of whether Title IX prohibition on sex discrimination had been violated).

¹⁰⁶ *See, e.g., Smith v. Metro. Sch. Dist. Perry Township*, 128 F.3d 1014, 1021 (7th Cir. 1997), *cert. denied*, 524 U.S. 951 (1998) (“Title IX’s prohibition of discrimination ‘on the basis of sex’ includes sex[-based] harassment by a teacher of a student.”); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41416,

Whether an individual or entity has created a hostile education environment turns on the following:

- the degree to which the complained-of conduct, including conduct causing student anxiety or humiliation, affects the student’s ability to access an educational program or activity;¹⁰⁷
- the location of the complained-of conduct, including whether the school has control over the student in that location,¹⁰⁸ and whether the conduct occurred in a public space, which is more likely to humiliate students;¹⁰⁹
- the type, frequency, and duration of the complained-of conduct;¹¹⁰ and
- the ages of and relationship between the complaining and complained of party,¹¹¹ including whether there is an “unequal power relationship” between the two, as occurs between a student and teacher or administrator.¹¹²

Instances of offending conduct are not considered in isolation. Instead, the question is whether the incidents cumulatively have resulted in a hostile environment.¹¹³

As documented above, SBE’s and DPI’s mandates to enforce SB49 and HB574 have already created a hostile educational environment on the basis of sex in North Carolina public schools. Their guidance, or lack thereof, on SB49 has already forced the involuntary outing of transgender students as well as walling LGBTQ students off from supportive materials, services, and educators. And their approach to HB574 further marginalizes transgender students by barring transgender girls from competing for their schools and jeopardizing the ability of transgender boys to do so.

SBE’s and DPI’s implementation of these laws checks every box when it comes to creating a hostile educational environment. They have severely restricted students’ access to educational benefits and, in the case of transgender girls and athletics, erected a total bar. These harms accrue daily, following students inside and outside the classroom, and are visited upon the youngest students in North Carolina’s public school system. Together,

41397 (July 12, 2022) (“[Title IX] also requires a recipient to respond to a hostile environment based on sex within its education program or activity in the United States[.]”).

¹⁰⁷ See, e.g., Nondiscrimination on the Basis of Sex, 87 Fed. Reg. at 41416; *Peltier v. Charter Day Sch.*, 37 F.4th 104, 129 (4th Cir. 2022) (en banc) (noting actionable Title IX harms include “emotional and dignitary harm”) (quoting *Grimm*, 972 F.3d at 616).

¹⁰⁸ Nondiscrimination on the Basis of Sex, 87 Fed. Reg. at 41416.

¹⁰⁹ *Id.* at 41417.

¹¹⁰ *Id.* at 41416.

¹¹¹ *Id.*

¹¹² *Crandell*, 87 F. Supp. 2d at 319.

¹¹³ *Id.*

these mandates humiliate LGBTQ students by telling them that they are less than their straight and cisgender peers, or, in the parlance of a leader of the state educational system, filth not intended by God.¹¹⁴

We know the consequence of such efforts to marginalize LGBTQ students: more dropouts and suicides. Of the LGBTQ students considering dropping out of school, more than half (51.5%) indicated that they were thinking of doing so because of a hostile school climate, including issues with harassment, unsupportive peers or educators, and discriminatory school policies and practices.¹¹⁵ And a more stressful, less supportive environment correlates with a rise in LGBTQ youth school absenteeism, depression, and suicide.¹¹⁶

On the other hand, inclusive policies can save lives. Such policies decrease suicidal thoughts and behaviors by LGBTQ students.¹¹⁷ For instance, transgender students in schools with inclusive policies had a greater sense of safety at school.¹¹⁸ And transgender students in states with fully inclusive athletic policies were 14% less likely to have considered suicide in the past year than students in states with no guidance.¹¹⁹

While the harms of policies that marginalize LGBTQ students are stark, they either harm or offer no benefit to their straight, cisgender peers. The Center for Disease Control (CDC) has found that inclusive policies lower in-school emotional distress, violence, and harassment for *all* students.¹²⁰

Even policies explicitly predicated on “protecting” straight, cisgender students do not do so. For example, while Superintendent Truitt has argued that excluding transgender young women is necessary to protect women’s athletics,¹²¹ data does not bear this out. High school girls’ participation in sports dropped from 2011 to 2019 in states with transgender-exclusive policies, while staying the same in states with inclusive policies.¹²² This makes sense. According to news reports, only 15 transgender students competed in

¹¹⁴ See *supra* notes 65-70 and accompanying text collecting disparaging comments made by Lieutenant Governor Robinson about LGBTQ people.

¹¹⁵ GLSEN, [The 2021 National School Climate Survey](#), at xix.

¹¹⁶ The Trevor Project, [2023 U.S. National Survey on the Mental Health of LGBTQ Young People](#).

¹¹⁷ CDC, [Inclusive Practices Help All Students Thrive](#), last reviewed June 27, 2022.

¹¹⁸ Center for American Progress, [Fact Sheet: The Importance of Sports Participation for Transgender Youth](#), March 18, 2021.

¹¹⁹ *Id.*

¹²⁰ CDC, [Inclusive Practices Help All Students Thrive](#), last reviewed June 27, 2022.

¹²¹ See Brian Murphy, [Senate Panel Passes Bill to Ban Transgender Girls from Girls Sports in NC](#), WRAL News, Apr. 17, 2023 (quoting Superintendent Truitt voicing support for HB574).

¹²² Center for American Progress, [Fact Sheet: The Importance of Sports Participation for Transgender Youth](#), March 18, 2021.

North Carolina interscholastic high school sports last year, out of a total of 180,000 student athletes.¹²³ Put simply, while participation can be life-changing for individual transgender student athletes, cisgender students are unlikely to ever compete against, much less know they are competing against, a transgender student athlete.

If these measures cause massive harm with no benefits, then why has North Carolina chosen to implement them? The answer is as straightforward as it is disquieting. As laid out above, key members of the North Carolina educational establishment openly question the existence and value of the LGBTQ community. They have been plain about their desire to banish LGBTQ identities from the public school system to the extent possible. Their approach to enforcing (and over-enforcing) SB49 and HB574 is their means of doing so.

And, in washing its hands of this legislation and the fallout from it, SBE and DPI are not neutral but instead exacerbating pre-existing harms and creating new ones. These agencies' instructions to implement these harmful mandates communicates to educators, parents, and students that federal and state protections for students are paper tigers in North Carolina. Relatedly, their silence on how to implement these mandates leaves educators to fend for themselves in navigating divergent legal, ethical, and professional obligations, all while trying to fend off those wishing to marginalize LGBTQ students even further.

V. The federal executive branch must take steps to bring North Carolina's public schools into compliance with Title IX and rectify the harms caused by SBE's and DPI's misguided implementation of HB49 and SB574.

In directing the implementation of SB49 and HB574, SBE and DPI have fostered a hostile educational environment for LGBTQ students in North Carolina public schools. By failing to respond to this environment, SBE and DPI have perpetuated and exacerbated this intolerable situation.

Accordingly, federal intervention is necessary to ensure that Title IX is enforced and that LGBTQ public school students in North Carolina are protected. When recipients of federal educational aid fail to live up to Title IX's obligations, the federal executive branch can bring intransigent actors into compliance with the law. Its powers to do so range from simply remedying the violation¹²⁴ to ending federal financial assistance to the offending party.¹²⁵

¹²³ Brian Murphy, [Senate Panel Passes Bill to Ban Transgender Girls from Girls Sports in NC](#), WRAL News, Apr. 17, 2023.

¹²⁴ 34 C.F.R. 106.3(a).

¹²⁵ 42 U.S.C. § 2000d-1.

Given that the harms here stem from state law, CSE requests that the federal executive branch directly address those provisions that violate Title IX. At a minimum, that would entail the United States Department of Education and/or Department of Justice issuing a determination to SBE and DPI that any provision or act which provides for any of the following violates Title IX:

- barring LGBTQ-affirming curriculum and removing LGBTQ-affirming materials from public schools;¹²⁶
- forcing the outing of LGBTQ students to their parents and peers irrespective of their wishes and their circumstances;
- imposing barriers on LGBTQ students accessing needed health and mental health support;
- requiring educators (on pain of undefined disciplinary consequences) to violate LGBTQ student privacy irrespective of the circumstances;
- barring transgender students from participating in school athletics; and
- barring transgender students from school facilities consistent with their gender identity.

SBE and DPI, in turn, must convey this determination of their Title IX responsibilities to each of North Carolina's 115 public school districts and over 200 public charter schools, provide training to school districts' and charter schools' Title IX coordinators on the legal protections afforded to LGBTQ students, and take steps to ensure compliance with the law. Finally, the federal executive branch should request that SBE and DPI appoint a liaison from their ranks to oversee and coordinate statewide compliance with Title IX.

More than this is necessary, however, to fully address the harms caused by the implementation of SB49 and HB574. SBE and DPI must also undertake affirmative steps to ensure LGBTQ students have equal access to education in the state. This, at the very least, includes SBE and DPI encouraging all North Carolina public school systems to adopt the measures recommended by the United States Department of Education for supporting gender non-conforming students.¹²⁷ But it also includes taking further steps to undo the specific harms of SB49 and HB574. These remedial efforts must include:

¹²⁶ Complainant is aware that the Department of Education cannot require, prohibit, or abridge "the use of particular textbooks or curricular materials." 34 C.F.R. 106.42. Complainant does not seek to have the Department choose books for North Carolina schools but instead simply issue a determination that North Carolina has engaged in impermissible discrimination on the basis of LGBTQ status in its ban on affirming curriculum.

¹²⁷ United States Department of Education, [Supporting Transgender Youth in School](#), June 2021.

- using welcoming and inclusive language in district and school mission statements, such as a commitment to ensuring safe and supportive campuses that are free from discrimination and harassment for LGBTQ students;
- ensuring school policies clearly affirm students’ rights to be free from discrimination based on sexual orientation or gender identity in all aspects of school, including the non-discriminatory use of discipline and equal access to school programs, activities, and facilities;
 - Equal access to school programs and activities would include returning to the pre-HB574 NCHSAA regulations, providing a path for transgender students to participate in high school athletics.
- adopting policies that respect all students’ gender identities—such as the use of the name the student goes by and pronouns that respect a student’s gender identity—and implementing policies to safeguard students’ privacy—such as maintaining the confidentiality of a student’s birth name or sex assigned at birth if the student wishes to keep this information private, unless the disclosure is legally required;
 - Such policies would include SBE and DPI creating and promulgating guidance statewide on allowing affirmed names in PowerSchool and adopting best practices to minimize the outing of students through the program.
- adopting policies or model plans to guide school staff on how to support students and communicate with families, such as encouraging the use of instructional materials affirming of all families and North Carolinians, providing developmentally appropriate protocols to support students in any transition process, developing a checklist of issues to discuss with the student or their family, and returning to an opt-out model for student surveys;
- facilitating opportunities for students to find support with peers, teachers, faculty and staff, such as student-led organizations, and identifying safe spaces on campus; and
 - This includes ensuring, consistent with the federal Equal Access Act,¹²⁸ that LGBTQ-related student-led groups such as Gay-Straight Alliances are treated the same as other student-led groups.
- providing professional development opportunities for educators on equitable and supportive treatment of historically underserved students, including LGBTQ youth, and taking steps to increase diversity among educators.

¹²⁸ See 20 U.S.C. § 4071 (prohibiting the restriction of schools’ limited open forums on the basis of religious, political, philosophical, or other speech content).

VI. Conclusion

SBE's and DPI's implementation of SB49 and HB574 is discriminating against LGBTQ public school students in North Carolina. This discrimination has created a hostile educational environment that harms LGBTQ students on a daily basis and, in so doing, violates Title IX. And it has placed educators in the impossible position of choosing between following the dictates of their state leaders or following federal and state law, as well as best practices for safeguarding all of their students.

SBE and DPI have refused to protect students or provide guidance to educators on their responsibilities pursuant to Title IX. This failure requires the federal government to step in. We respectfully request that the United States Department of Education and Department of Justice open an investigation into North Carolina's ongoing violations of Title IX and adopt the remedies outlined above.

Thank you for your consideration of this complaint. Please let us know if we can provide further information helpful to your investigation.

Respectfully submitted,

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Appendices

Appendix A: Testimonials

The following testimonials are among those collected in November and December 2023 from administrators, staff members, educators, parents, and students in North Carolina’s public school system. To protect the identities of the individuals who have shared their personal experiences for inclusion in this complaint, CSE identifies them here by description and number only. These individuals have agreed to be quoted in this complaint and expressed their willingness to talk to OCR investigators. Upon request, should the Office of Civil Rights open an investigation, CSE would gladly attempt to put investigators in direct touch with the individuals who have shared their stories in this complaint.

I. Administrators and Board of Education Members

Board of Education Member A77

One member of a local Board of Education submitted the following, which we are including in its entirety, as it could almost be its own Title IX complaint. The author is anonymous here, as with our other testimony, but they are willing to speak with a civil rights investigator.

Narrative Regarding Conflicts of the NC Parents Bill of Rights Law (SB 49)

School Board Representative Perspective

The following narrative is my individual perspective as an elected representative serving on a local Board of Education in North Carolina. It is not meant to speak on behalf of the full board or represent the perspectives of the full board or any other individual board members. In attempting to reconcile school board policy adjustments to meet the requirements of the NC Parents Bill of Rights law, I have found multiple instances where I believe the new state law may be in conflict with federal law. The narrative below addresses these issues as I have encountered them since the law was passed in August 2023 with subsequent parts amended in late September 2023.

The law in NC, now known as the Parents Bill of Rights law (formerly SB 49, herein after referred to as “PBR law”) creates conflict with other state and federal laws (Title IX and Title VII), local policies, professional standards, ethical standards of service, and more concerning, it creates a hostile learning and working environment for students and staff of our public schools. Below I will explain the conflict that this law has created within key stakeholder groups of our public school system.

Students:

1. *Suicide Assessments*: In times of mental health crisis, students may report their feelings toward self-harm to trusted school staff. Such students in crisis are served in our schools by School Counselors and School Social Workers. For the school staff to adequately assess the mental health needs of the student in crisis, they use professional standards and best practices called for by the NC General Assembly and NC Department of Public Instruction (NC DPI), such as administering the Columbia-Suicide Severity Rating Scale (C-SSRS) or similar Suicide Protocol mandated by the NC DPI Mental Health Plan. This standardized assessment, utilized in our school system and more broadly used in schools across our state, is now considered under PBR law to be a “protected topic survey” which now requires parental “opt-in” prior to administering such a survey.

a. This creates a delay in serving the student in crisis, especially when parents are not reachable during the work day. This creates conflict with “Good Samaritan Law”. In such Good Samaritan law, if the victim is a minor, consent must come from a parent or guardian. However, if the legal parent or guardian is absent, unconscious, delusional, or intoxicated, consent is implied. A responder is not required to withhold life-saving treatment (e.g., CPR or the Heimlich maneuver) from a minor if the parent or guardian will not consent. The parent or guardian may then be considered as neglecting the minor, and consent for treatment is implied by default because neglect has been committed. Special circumstances may exist if child abuse is suspected, such as the courts will usually give immunity to those first responders who report what they reasonably consider to be evidence of child abuse or neglect, similar to that given to those who have an actual duty to report such abuse, such as teachers or counsellors. However, the NC PBR law grants no exception to the law’s “parental opt-in” mandate for first responders administering the required NC DPI suicide assessment. In the case of a mental health crisis, administering such suicide assessments can be considered a first step in providing life care to a minor. The “parental opt-in” mandate creates a hostile environment for professionals who need to administer life saving care.

b. More critically, the NC PBR law mandate for “parental opt-in” for mental health surveys also creates a hostile environment for the student who may be struggling with a mental health crisis because of abusive or negligent parents. In effect, communicating to the student that needed services cannot be provided until the very parents, who may be the root cause of the mental health crisis, are contacted to opt-in to the Columbia-Suicide Severity Rating Scale. This creates a stigma in the school community towards students struggling with mental health issues originating at home, that they are not safe to seek assistance from trusted school professionals.

c. More specifically, this creates a hostile environment for students who may identify as transgender or as members of the LGBTQ community, who have the highest rates of suicidality among teenage youth in our schools. Often the root cause of their mental health struggle may arise from un-supportive or abusive parents. The PBR law creates a very dangerous and hostile environment for such youth in our schools. Effectively communicating to these students that their un-supportive or potentially abusive parents must be notified before mental health supports can be provided by trusted school staff. This process of mandating parental opt-in prior to giving the Columbia-Suicide Severity Rating Scale, may also effectively “out” the student before the student feels safe enough to communicate their status to their parents. This creates a hostile environment for transgender and LGBTQ students by denying them safe and confidential mental health supports in the school environment. Such a hostile environment may prevent such students from seeking very critical mental health support in a time of crisis. Therefore, this “parental opt-in” mandate for suicide assessments also creates a discriminatory environment where the transgender or LGBTQ student is subjected to risk of being “outed” whereas their cis-gender or straight peers would not be exposed to such risk for seeking mental health care in the school.

2. *Preferred Name and Pronouns*: Our school district and many others across the state have policies or regulations that support youth who may be in various stages of transition related to gender identity or sexual orientation. Often, as students navigate these transitions, they may first express themselves in trusted supportive environments, such as the school. This expression can take many forms, but one very important form is through a preferred pronoun or name that may be different than that presented on birth certificates or on official school records. As these youth navigate this critical time of finding confidence in their identity, they seek supportive environments free from discrimination or hostility. The school board policies and regulations that support these youth, provide guidance to staff on how to respectfully and carefully provide a learning environment that is safe and inclusive. It is understood in these policies, that in many cases, students have not confided their identity or sexual orientation to their parents, because their parents are un-supportive, neglectful, or abusive because of negative parental perspectives about gender identity or sexual orientation. The supportive local school board policies still encourage the trained School Counselors or School Social Workers to respectfully work with the student to safely involve their families in their gender identity or sexual orientation transitions. However, the safety and rights of the student guide the pace of that conversation with parents.

Contrary to these supportive, non-discriminatory local school board policies, the PBR law creates a hostile learning environment where staff are now required by the PBR law to immediately “out” such students to their parents whenever a name or pronoun change is requested, without exception for the safety or concerns of the student. Even in somewhat careful practice, this would translate into a situation whereby staff must inform the student that if they

wish to change their preferred pronoun or name to anything other than what is on official school record, even if just informally, then their parents must be notified. In these cases, the student may have the opportunity to withdraw their request, but the stigma has already occurred and the hostile environment already created. The environment shifts from one that is supportive and non-discriminatory under local policy and federal law, to one that is hostile toward their personal identity under the NC PBR law. In many school districts, the law may be interpreted that if the name change request is not related to gender and simply a shortening of a name or a generally accepted nick-name to that on official record, then it is not necessary to notify parents. This practice in itself is discriminatory. It creates an environment where only transgender student name or pronoun change requests mandate parental notification, while cisgender student requests are not required for parental notification. Again, this type of discriminatory practice creates a hostile learning environment where gender fluid students are not allowed to have their identity safely and respectfully supported, in contrast to their cisgender, non-gender fluid peers. This hostile and discriminatory environment will likely add to the mental health struggles of transgender and LGBTQ youth as described earlier in section 1 related to suicidality rates among transgender youth.

3. *Instructional Materials Related to Gender Identity or Sexual Orientation in Grades K-4:* The PBR law mandates that there shall be no instructional material provided to students related to gender identity or sexual orientation in grades K-4. Though our district nor any others in NC provide instruction related to sex, sexual orientation, or gender identity in grades K-4, we are now presented in the PBR law with a definition of “instructional material” to include “supplemental materials” which can broadly be interpreted as “anything in the classroom”. In some classrooms, teachers may have pictures of same sex spouses, classroom libraries that include books reflecting families with same sex parents, or inclusive stories about transgender or LGBTQ youth. The PBR law generally includes these types of classroom items as part of the definition of instructional “supplemental materials”, even though no formal instruction about gender identity or sexual orientation is taking place. The language of the PBR law creates a hostile and discriminatory learning environment where students who may identify as transgender or as members of the LGBTQ community, or who have families who identify as such, are no longer allowed to access supplemental materials that reflect or validate such identities in our community. Effectively, this creates a discriminatory, hostile learning environment where, at a very young age, it is communicated that their identity or that of their families is not welcome, while the identity or families of their cisgender straight peers is allowed to be represented. In our district we have already had multiple public comments, empowered by the PBR law, in board meetings or complaints to principals, that target specific classrooms or schools for having such materials in the school building, thus stigmatizing transgender or LGBTQ youth and creating a hostile learning environment.

Staff:

1. *Instructional Materials Related to Gender Identity or Sexual Orientation in Grades K-4:*

The PBR law mandates that there shall be no instructional material provided to students related to gender identity or sexual orientation in grades K-4. Though our school district, nor any others in NC provide instruction related to sex, sexual orientation, or gender identity in grades K-4, we are now presented with a definition of “instructional material” to include “supplemental materials” which can broadly be interpreted as “anything in the classroom”. In many classrooms, teachers may have pictures of same their sex spouses, books that may have inclusive LGBTQ characters, buttons or emblems of the Pride flag, or posters noting that their classroom is a safe space for LGBTQ youth. The PBR law now generally includes these types of items in the classroom as part of the definition of instructional materials, even though no formal instruction about gender identity or sexual orientation is taking place using these materials. The language of the PBR law creates a hostile and discriminatory professional environment where staff who may identify as transgender or as members of the LGBTQ community, are no longer allowed to express themselves, display family photos, or have materials in their classroom that is fully inclusive of the LGBTQ community. Effectively, this creates a discriminatory, hostile professional environment where it is communicated by the PBR law, that their identity or that of their families is not welcome, while the identity or families of their cisgender straight peers is allowed to be represented. Other federal and state law prohibit discrimination based on race, religion, sex, gender, or sexual orientation (Title IX). The NC PBR law is clearly discriminatory toward employees who may identify as transgender or members of the LGBTQ community, because any supplementary instructional material (including those examples provided above) that portray the existence of transgender or LGBTQ families or support for their community, is banned from the classroom. In some districts, this could even be taken to the extreme where LGBTQ employees who do express themselves, could face financial or professional consequences if they do not comply. Already in our district, we have had parents who are hostile toward members of the LGBTQ community, and submit complaints to principals that an employee in the school is expressing their LGBTQ status in the school or on their personal social media accounts. Also in our district we have already had multiple public comments, empowered by the PBR law, during board meetings, that target specific teachers or staff for having such materials in a school building, thus stigmatizing transgender or LGBTQ employees and creating a hostile workplace environment. All of this creates an environment where the principal must confront employees about such complaints and consequently the employee becomes targeted for their sexual orientation or gender identity, which is clearly a breach of their rights as expressed in federal laws such as Title VII and Title IX.

2. *Teacher Licensure Impacts:* Provisions in Title IX can strip a teacher of their licensure and the school district of federal funds, if they violate the tenets of that federal law. Because the PBR law was made effective before local school boards could discern policy to guide its implementation, it became incumbent for individual staff to discern how to abide by the law.

This created a sincerely conflicted environment for our staff, where some may have felt compelled to abide by the more discriminatory portions for fear of repercussion, while others may have felt compelled to not abide by the state law because of its obvious conflicts with Title IX. Transgender and LGBTQ students and staff could effectively face varying interpretations of the law, and thus varying personal consequences, depending on the personal interpretations of the local school building authorities or community members with which they were interacting at the time. Here again, their cisgender, straight peers would not face such conflict, making this law discriminatory in practice right from the outset.

Conflict with duties of elected School Board Representative:

1. Oath of Office: Before taking office, newly elected school board members across our state take the following oath of office:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution and laws of the United States, and the Constitution and laws of the State of North Carolina not inconsistent therewith, and that I will faithfully discharge my duties as a member of the _____ Board of Education, so help me God."

Thus we are bound to uphold both federal and state law, but not in the case where state law is inconsistent with federal law. Article VI, Paragraph 2 of the U.S. Constitution, referred to as the Supremacy Clause establishes that federal law takes precedence over state laws and state constitutions. Therefore, any state law passed that directly contradicts federal law, creates a conflict with our oath of office. Regarding PBR law, our board of education can be sued by a parent for not abiding by discriminatory portions of the state PBR law—while at the very same time, be sued by another parent or employee for violating federal civil rights law such as Title IX or Title VII because we are abiding by the discriminatory portions of the state PBR law. Because the PBR law is very nuanced and in some cases non-specific, it passes the responsibility of interpretation to the level of local school boards. This will lead to a myriad of variable interpretation and implementation from district to district. Some districts may fully implement the discriminatory portions of the state law, creating hostile learning/working environments in their school, while others may seek to defer to the supremacy of the federal civil rights laws.

2. Code of Ethics: Our school board and all school boards across the state have mandated policy recognizing that collectively and individually, all members of the school board must adhere to a code of ethics as required by NC G.S. 160A-86 and G.S. 115C-47(57). Most notably that legal code of ethics mandates that we obey all applicable federal and state laws regarding official actions taken as a board member. Therefore, again, any conflict between PBR law and federal civil rights law (such as outlined previously in this document) prevents us from fully abiding by our own code of ethics as required by state law.

3. Conflict with Title IX: The Notice of Interpretation issued by the US Department of Education's Office for Civil Rights on June 16, 2021, explained that, based on the June 2020 U.S. Supreme Court decision in *Bostock v. Clayton County*, it will enforce Title IX's prohibition on discrimination on the basis of sex to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of federal financial assistance. Because of the nuanced complexities of the NC PBR law previously mentioned in this document (e.g. requiring parental opt-in for suicide assessments, parental notification upon student request for change of name or preferred pronoun without exception for student safety, etc.), our school board is put in the position of having to reconcile portions of the PBR law that could inherently create discriminatory actions based on sexual orientation or gender identity, with federal law Title IX that prevents such discrimination in the school setting for students or employees. Because the state law is inconsistent with federal law, our school board and those across our state run the risk of penalty or loss of funding, either from the state government or federal government, or both. This conflict is inevitable because the requirements of the state PBR law cannot be implemented operationally without violating federal civil rights law such as Title IX.

4. Conflict with Title VII: Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to discriminate against someone because of Sex (including sexual orientation and gender identity). Under Title VII, employers cannot harass an employee because of sex (including sexual orientation and gender identity). Because the NC PBR law bans "supplemental material" in the K-4 classroom that may present inclusive representations of LGBTQ or transgender youth or families, and which could include personal items of the teacher (such as family photos of same sex spouses), while not banning "supplemental material" in the K-4 classroom that represents cisgender straight youth or families—a hostile and discriminatory workplace will be created that will effectively require LGBTQ teachers to remove those supplemental materials, while not requiring the same from cisgender straight teachers that have supplemental materials in their classrooms representing only cisgender straight youth and families.

Administrator 78:

Here at [redacted], we have a comprehensive health education program for grades K-8. Our program includes crucial topics for child development, like how to be a good friend and how to be respectful to others and ourselves. Our program also includes teaching about consent and gender identity. This essential curriculum aids the cultivation of a safe learning environment, provides age-appropriate lessons for human health and identity,

and promotes deeper understanding of human differences. Not only that, the integration of this curriculum ensures we comply with Title IX regulations.

We have gender-diverse families in our school who feel safe in a learning community where their peers benefit from a curriculum that emphasizes knowledge and acceptance. The importance of mental health for students has become a paramount concern in schools post-COVID. We know the rate of suicide has risen, especially among young people experiencing discrimination. Cultivating a more accepting environment has been vital to the mental health of everyone involved.

Teaching children about gender identity in an age-appropriate manner allows them to become more accepting and understanding of differences among their peers and themselves. It helps children feel more confident, fosters an essential sense of belonging among students, teachers, parents, and caregivers, and enables students to perform better academically. Learning about gender identity at an early age helps children develop a better understanding of gender-based rights and responsibilities, as well as an awareness of gender-based discrimination. Teaching children about gender identity in elementary school helps establish and preserve an inclusive and safe environment for all students.

Following SB 49 would require us to eliminate the majority of the comprehensive health education program in grades K-4. Censoring these pivotal topics for our younger students, especially gender identity, will create an environment where students and families are misunderstood by their peers and excluded from the daily affirmations all students deserve. A critical consequence of eliminating this instruction for families and staff will be increased misunderstandings that affect a hostile classroom environment. As a result, the risk for adverse mental health consequences like depression, anxiety, and even self-harm and suicide among students increases substantially.

We have both an educational and legal responsibility to include gender education in our curriculum. To be clear: removing a part of our program designed to protect a group of people is a form of discrimination in violation of Title IX. – K-8 School Administrator (A78)

II. Staff Members

Staff Member 66:

My clients are feeling more unsafe in schools than they ever really have in the past and this is negatively impacting their mental health. In sessions, we have begun to shift from regular daily adolescent issues and processing to "You will not believe what my teacher

said to me when I asked that my pronouns be used." My work has begun to shift to helping my teens navigate being discriminated against in schools BY ADULTS and how to navigate a required (school is required for many of my students under the age of 18) environment that they spend a majority of their daily time in. I actually have one client who has moved from another state to get away from discriminatory laws... only for this bill to be passed. And I have another student that will most likely drop out of public school and attend virtual school.

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“As an outpatient social worker that meets with students after school, I have seen SB49 negatively impact many of my clients. About half of my population is transgender. Many of my students have come into session very upset and feeling discriminated against because their teachers and administrators have stopped respecting their pronouns and correct names, and their emails have been converted back to their dead/given names. To make it short, SB49 has made LGBTQIA+ childrens' lives harder. Additionally, it is disgusting and frustrating that as a social worker/therapist, SB49 has also made my work harder. My LGBTQIA+ teens do not need more stressors than they already have . . . and thanks to this bill, their stressors have significantly increased." - Social worker (SNC66)

Staff Member 67:

As a clinical licensed social worker working in rural NC, without SB49, we already had barriers around LGBTQIA+ clients in Appalachia. With SB49 and working in the schools, this has caused barriers surrounding access to treatment. As a social worker, I have a Code of Ethics that I need to abide by and that guide my practice. SB49 is directly opposite of what a clinical social worker should be doing. My ethics express that we need to respect our client's self-determination, be culturally competent, engage in social justice, and respect the dignity and worth of a person. As well as maintain a client's confidentiality. It is unfortunate that I am experiencing barriers to providing behavioral health services in schools because I refuse to go against my ethics and break a client's confidentiality. This bill is incredibly scary and does not take into account many statistics surrounding the LGBTQIA+ community, such as increased suicide and self-harm rates when they are outed in their community. We are ultimately harming students, and the effects of this bill should be taken into consideration. – School social worker (SNC67)

Staff Member 68:

I am a school counselor, a parent of a student, as well as a licensed clinical mental health counselor. I am also a member of the suicide prevention and threat assessment leadership

team and a lead on one of our crisis response teams. I am deeply concerned about the impact on student mental health on implementing SB 49.

We are currently in a mental health crisis in this country. Suicide has surpassed homicide and is now the second leading cause of death for teenagers. We have seen this firsthand in our county. All of the evidence and research shows that a comprehensive prevention strategy is the most effective way to decrease suicide rates. According to the Suicide Prevention Resource Center, an important part of a comprehensive approach is identifying those students at risk, responding effectively to those in crisis, and increasing help-seeking.

The requirement to seek permission prior to conducting a suicide or threat assessment will create barriers to evidence-based interventions to support students and keep them alive. It is already in our county's protocol to inform a guardian when we speak to a student about suicide or conduct a suicide assessment. We are already working with parents and collaborating to provide the support needed.

It is part of my job description and my ethical standards to advocate for anti-bias, equitable policies and procedures and provide effective, evidence-based, culturally responsive interventions to ALL students. Not all of our parents are available on an emergency basis, and requiring permission before we conduct our assessments will put a population of students at a disadvantage. All of our students deserve the same access to suicide prevention.

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I am also worried about the duty to notify when a student discloses that they would like to change their preferred names and preferred pronouns. My code of ethics compels me to have my primary obligation to the students and to implement evidenced-based interventions. All the evidence shows that when a trans student is given the chance to be supported in their journey by having adults recognize their preferred names and pronouns, this decreases anxiety, depression, and suicide ideation. Please follow the research when making decisions about policy.

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Our district has been conducting the Panorama Student Survey for several years now to get student voice in the climate of the school. It is used to set goals in many (if not all) school improvement plans. Some of the data we have found important are caring adults (do students believe there are adults in the building that care about them), school safety,

and sense of belonging, which are directly correlated to student success. Less than 50% of students felt like they belonged in our district schools last year, and our school stands at 45% who feel no sense of belonging. Without current data we will not be able to assess the challenges and implement whole school programs to address the disparity.

Diversity and inclusion is also a topic we address. This asks if the school talks about different cultures, and does the student body and teachers treat different cultures fairly. Without this survey, there will be no way to know if students feel seen and appreciated for being different or if they are being targeted. These surveys are anonymous; we get aggregated data by gender, grade level, race, learning status (special ed or general ed) but we do not know who answered what, which allows students to be more honest.

Response rates need to be in the 75-85% range to have valid data. With the parental permission requirement in place, we had 12% of our students get permission to take the test this year. There is talk of the survey going away all together, because we pay for it. School climate is vital to student success and this data gives us directions to move. Because of this law we cannot even conduct school wide surveys and drill down in the data and find out which populations feel unseen, unvalued, unsafe. The law is quieting student voices, particularly minority voices. It is disrupting our ability to reach our school improvement goals. – Middle school counselor (SNC68)

Staff Member 99:

I had a 4th grade teacher at my school reach out to me for guidance on how to handle questions from her students after one of them announced a new name and gender identity. As the school's designated LGBTQIA+ Liaison, I provided the teacher with information on how to proceed. However, the school counselor (who had also been cc'd on the email) strongly disagreed with me being included in the conversation and ultimately called the parent to notify them without discussing it with the student or teacher. I was very upset that the counselor did this and saddened that a person who should be the most supportive of our students is not a safe person for them to come out to.

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I am the parent of 4 children in [redacted], and I work in the office of an elementary school in the same district. I have helped many families in our district over the last 2 years to navigate the system to get their child's preferred name in PowerSchool and their school email addresses updated with their preferred name. On a phone call at the end of August 2023, our district's executive director of IT refused to change any additional email addresses even with parental consent and stated the reason as needing further

clarification from the superintendent following SB49. I did not get a resolution for 11 days. I felt frustrated by the misinterpretation of the law and angry that these students had to continue using email addresses and computer logins with their deadname. – Parent and school staff member (PSS99)

III. Educators

Educator 33:

I'm the advisor of the yearbook. Typically I sent a form out to the whole school (students & staff) asking for what name they want printed in the yearbook. The majority of these are shortened versions of a student's name/nicknames. I cannot do that this year because of SB49. This results in the yearbook staff not being able to accurately identify who a student is because they know kids by their nicknames instead of their given names. This has made my job and the job of my yearbook staff significantly more difficult to the point that I can't teach accurate journalistic reporting. – Parent and high school educator (PE33)

Educator 34:

I am a media coordinator in a K-5 [redacted] school. I have been at my current school for a little over a year and, due to rather conservative leadership, have had a hard time curating a library book collection that is inclusive due to reticence by admin to include age-appropriate books on LGBTQ themes. This year, I brought about 35 books to my MTAC (Media and Tech Advisory Council) for approval to be included in our collection and six were flagged by admin and sent to the [redacted] asst superintendent, [redacted], so that she can read them and see if they are a violation of SB 49. My MTAC, in general, strongly supports their inclusion into the library collection. We are currently still on hold with the six titles, as she says she doesn't know yet if these books will be allowed by the new law. Three have themes of the trans experience, one is specifically about pride, one a sweet story about a girl who happens to have two moms, and the other is Sharice's Big Voice which is simply the true story of how Sharice Davids became a Native American Congresswoman (in it she states she is lesbian). While this whole conversation was unfolding, a first grade teacher who is on my MTAC came up to me in private to ask if it's ok that she has a book in her classroom that features all kinds of families, including same-sex families. She reads it in the beginning of the year with all of her classes because she feels it is a beautiful story about community and about being loved where you are, but she was fearful that she would be crossing the SB 49 law. I advised her not to make any changes or exclude the book and told her that if anyone questioned her about it she can say she'd run it by me and that I had told her to keep it.

Last week, I discovered that the district has decided to quit the partnership we have had for years with the [redacted] Public Library system which provides universal access to library cards for all [district] students. For years, all [district] students can use their student ID (lunch number) to borrow books from any branch of the [redacted] and can access the excellent e-book and audiobook collection, NC Kids Digital Library, on SORA. As a result of over-adherence to SB 49 and fear that students could access books not directly approved by [redacted] officials (I have to assume these books are ones with LGBTQ subject matter), the partnership has now become an "opt-in" program. This had not been communicated to principals or to media coordinators. I happened to figure out what was going on when some students began to report they were unable to access their books (these were EC students who were listening to Battle of the Books, aka EBOB, audiobooks so that they can participate in the reading program) and I went to see a [redacted] librarian to find out what was going on. The district had emailed out a notification of the opt-in and gave families ONE WEEK to do so. Thankfully, I caught this, notified all the district MCs, and we were able to push the due date back and expand the ways this information was getting out to families. In the meantime, I have students who are unable to access the books they had been reading, EC students who are no longer able to adequately participate in EBOB (I'll find another way, of course, but am furious that this has happened to them), and have a fifth grade teacher whose entire class lost the e-book they all read together every year as a supplement to their Wit and Wisdom curriculum. – Parent and elementary school media coordinator (PE34)

IV. Parents

Parent 22:

What we have seen is that staff, for the most part, really don't know how to respond to issues that come up around trans kids, because it appears that nobody is sure what's ok and what isn't. For instance, when we requested that [our student] be able to use a private bathroom to change into her swimsuit for her swim club, her guidance counselor offered no support or help at all and deflected all communication to the administration who were also unresponsive. It took intervention [from an outside advocate], that leveraged a personal connection with the principal, for us to get that done.

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HB574 has been directly impactful. Our daughter was looking forward to swimming for [redacted] as a freshman and making new friends. Prior to this year she swam at the local swim club where she was friends with many of the other swimmers, many of whom didn't know she was trans. Naturally, some of those friends were in her class or already in

high school and it forced her to have an explanation for why she wasn't swimming for the high school, since she wasn't comfortable telling many of them the real reason. Moreover, she is denied the ability to represent her school in swimming, something that would have been a point of pride.

Luckily, the legislation doesn't apply to swim clubs so she joined a competitive swim club but that adds a good hour of driving to drop off & pick up, several days a week. As parents of a trans kid swimming for a club, we respect our daughter's desire to let only people know whom she feels comfortable with. Many people are hostile towards trans people, and it can be hard to know who they are at first. Worse, that hostility has now been legitimized and emboldened by this legislature. That creates a safety issue for us as we cannot be open about our thoughts and experiences about the high school swim team. And at the club our daughter swims at, it's not unusual for the high school swim team to come up as a topic of conversation.

All things considered, our daughter is still getting to swim and make friends, which is great, but there's also a significant psychological impact in terms of her feeling that the government is telling her she's a second-class citizen, that there's something wrong with her. The day she found out the legislation passed was a dark day and that extended for a week or more. She frequently says that she hates this country and not-so-jokingly asks when we're going to move to another country.

Obviously she has our support and the support of most extended family, friends, neighbors, and so on - but that doesn't mean that it's not awful for her to be identified as a member of a group for which enough political will is present in North Carolina that laws can be passed that directly limit her abilities and rights to things that other students take for granted. – Parent of a high school athlete (P22)

Parent 23:

My daughter, assigned male at birth, is a senior at [redacted] High School in [redacted] County. Her name is legally changed and her gender is female on her passport and driver's license. Her birth certificate is from a different state where changing the sex is more difficult, so it does still say male.

She's been using the women's bathrooms at her high school for three years with no complaints or concerns. In August of her Senior year she was called into the office to get her key to the teacher's restrooms (single stall/unisex). She questioned whether or not using these restrooms was a requirement. The Assistant Principal in charge of the keys did not know so pulled the Principal into the conversation. My daughter was then told

that someone had complained and was strongly encouraged to only use the unisex bathrooms. She pushed back and expressed discomfort with that solution but she did not feel like she truly had the option to say no. She accepted the key and came home to share the story with me.

I was concerned that this was illegal and improper so I sent an email to the Principal. The Principal then called me to say that the guidance he was given by the Superintendent and the district lawyer was to have all trans kids use these teacher bathrooms. However, that lawyer was removed by the school board last spring. Since there is a new legal counsel, the Superintendent and his legal team said they would review the guidance and get back to me.

I followed up with a summary email to document the conversation. I advised them to review Title IX and Grimm v Gloucester County Schools. The new lawyer reviewed the information I provided (which was based on a letter CSE wrote for a parent in another district in 2021) and agreed that we are correct. My daughter now has both options, the regular rest room or the unisex and the principal is working to get the message out to other trans and enby kids.

The Principal has been very supportive and affirming over the years and I believe he truly wants to do what is best for these kids, but also needs to follow district guidance. He mentioned how much he has learned from my daughter over the past three years and how much he appreciates how open and out she is about gender and sexuality. So, for now, [the district] is on the right track and this is more evidence the school board was right in replacing the previous lawyer.

...

What remains a frustration is the constant need to fight and advocate. Children should be focused on school and learning, not on defending their basic human rights. During the COVID epidemic with remote learning, we worked with the district to get student's preferred names to show up in the video conference software as many gender diverse students, including my own, were skipping classes to avoid being outed by a dead name label in the virtual classroom. The district worked hard to make this change, but again it was reactive, not proactive as they had no guidance on the harms until we reached out.

...

My hope for all children attending North Carolina public schools is that their names, gender identities, and corresponding pronouns are respected without question so that they

can go back to the business of learning instead of spending their youth teaching grown adults how to be kind. – Parent of high school student (P23)

Parent 24:

At my son's school, a teacher instructed the kids that their gender had to match what was listed in Powerschool. This interpretation upset a lot of his trans friends, as the Powerpoint slide the teacher presented on the matter did not indicate that it was the student's choice. It also did not recognize that some parents had already contacted the school to tell them they knew of their child's new gender but had not updated Powerschool. The explanation seemed to indicate that a student must have Powerschool changed in order to have their gender recognized. In addition, the Powerpoint slide did not account for non-binary students.

...

In our schools, fourth grade puberty discussions for girls have been moved to fifth grade due to SB49. I think this is profoundly irresponsible, as some girls get their periods in fourth grade. Failing to provide them with information about their own puberty experiences is cruel and a grave abdication of our duty to provide adequate health education. A school board member wants the policy related to the health education component of SB49 to be extended to 12th grade, meaning no discussions of sexual orientation or gender identity would be allowed in any school in our district, regardless of the student's age or year. How on earth will students learn about sex at all, since all sexual intercourse requires an orientation? How will they receive information on contraception or STDs? How will students know that deadnaming a transgender person is a form of bullying? Ignorance is dangerous in so many respects.

...

Teachers were told to never encourage children to withhold information from their parents, which I believed was setting a dangerous precedent for children who could be a risk. If a child ever told me that they had information that might cause their parents to harm them, I would encourage the child not to do anything that might put themselves in danger, even if that meant withholding the dangerous information. The instructions given to my school district's staff did not account for this safeguarding scenario. The initial correspondence also did not account for situations when the staff member themselves should not provide information to parents when the student believed it could increase their risk at home.

...

Two particular policies have been requested by a board member to be extended beyond 4th grade. The first is the health survey parental permission. A school board member is requesting it be extended through 12th grade. This has caused concern amongst school nurses about poorer health outcomes, due to permission slips going missing or ignored. Kids' hearing and vision screenings were a particular concern overall with SB49, especially among non-native English-speaking parents, who may not always be provided with translations.

...

SB49 was implemented at my son's school district before the school board drafted and approved an official policy that could be reviewed by the Title IX coordinator. Since the policy did not officially exist yet, its ad hoc implementation was a chaotic interpretation by different teachers, principals, and administrators.

...

When I contacted the district's Title IX coordinator to ask why SB49 had been implemented without the policy process, including Title IX review, taking place first, she said that they were doing the best they could and that she could only investigate specific instances of misunderstandings. When asked about her responsibility to halt the implementation if it was not in compliance with federal law, she said that she did not work for the federal government. She said she worked for the state. I asked her to complete a Title IX review of any policies related to SB49 and to provide me with a copy. So far, despite multiple requests made for this review and multiple weeks passing, she has not provided a Title IX review to me. The school board did eventually draft policies related to SB49. Some of them have been approved, but currently some are still under review.

...

I have no doubt this school board will use SB49 as permission to create even more discriminatory policies, as they are already starting to do. One school board member proposed a transgender bathroom ban recently, barring transgender people from the bathroom of their chosen gender. More of these types of discriminatory initiatives will surely be in our future if SB49 is allowed to stand. SB49 provides them with the state-sanctioned license to discriminate in all sorts of inventive new ways that endanger some of our most vulnerable students.

...

Even before SB49 was implemented we have experienced a hostile educational environment for LGBTQ students in our district with book bans, inclusivity symbols bans, and transphobic social media posts by school board members. My fear is that SB49 has established a new precedent for silencing the voices of our LGBTQ students and casting a dark shadow over their existence in our public schools. We have already had a suicide in recent years of a trans student in our district due to transphobic bullying in one of our public schools, as well as a suicide of a recent trans graduate of one of district's public schools earlier this year. In addition, this past summer, a recent graduate of one of our district's public schools murdered a trans teen in our county's largest town. How can we prevent further tragedies if we cannot even speak of the existence of transgender students? Ignorance breeds more phobias and hatred. – Parent of high school student (P24)

Parent 25:

SB49 intentionally removes mention of LGBTQ families from our schools. This removes our rights to have broad, equal, and diverse representation of humans in our communities. SB49 removes the rights I have worked for in building trusting and open relationships with my children to allow them to share non-grade related personal information if and when they feel comfortable. – Parent of elementary school students (P25)

Parent 26:

We moved to [redacted] from [redacted] this summer... Our teenage son, who is transgender, is in high school. He was assigned to [school district redacted]. Discussing with local parents, educators and other parents of trans students, it was made clear to us that our son's experience and safety at [redacted] could not be guaranteed, especially as the state legislature radically increased the toxic attention directed at trans kiddos. Southern Equality stepped in to help our family, and he was accepted at [redacted], located in [redacted]. His health care must be provided by specialists at [redacted], and we are among the very fortunate families because our son's health care status is currently protected by the grandfathering clause in new and incredibly harmful state legislation. We live in a state of fear, however, because of the behavior of current NC Republican politicians and the adoption of radical policies created by outside political action groups who see our children as effective pawns in their cynical culture war. – Parent of high school student (P26)

Parent 27:

Participating in sports is very important to my transgender child's mental health and provides a community of inclusion. He played three seasons on the women's tennis team and one on the women's swim team. Last fall he started testosterone treatment, and in accordance with NCHSAA policy applied and was approved to compete for the men's team last year. The school and the team were very supportive and our school has had several prior transgender athletes as well. This year when we submitted the recertification paperwork to participate this year the athletic director was given unclear and conflicting information. Now, he's been told as of October 30th, all athletes must participate as their assigned gender at birth. This does not seem consistent with the bill banning transgender participation in women's sports or their own policy on medication use last year. Again my child will have to choose between participating in sports or being seen as who he is. – Parent of high school athlete (P27)

Parent 28:

Friday afternoon before the longstanding and nationally recognized "Banned Books Week" (that [redacted] schools have actively participated in since the 80s), the district's Chief Communications Officer, [redacted], sent an internal email, leveraging language she heard from [redacted] leadership including Superintendent [redacted], that basically banned Banned Books Week participation this fall. In the internal email, she incorrectly stated that BBW goes against [redacted] Pillars of Excellence (in fact, they align), gave a directive to pull down any materials and cancel any planned events, and warned (threatened?) employees they could run afoul of SB49 if they failed to comply. Understandably, the email was poorly received, and shared outside the walls of [redacted]. Upon becoming publicly shared, [the administrator] backpedaled and sent a second, far weaker email. The dampening effect of the 1st email was not assuaged by the follow up, so only a handful of [redacted] libraries participated. In this case, fear, threats and gross misinterpretation of the law won out.

...

[Redacted] Superintendent, [redacted], has made *at least* three unilateral decisions to pull LGBTQ books from either curriculum or library shelves.

- 1) Let's Talk About Sex
- 2) Red: A Crayon's Story
- 3) Jack of Hearts (and Other Parts)

She made these individual decisions by undermining both the school level and district level Media Advisory Committees, which saw relevant educational value in each title. Jack of Hearts is particularly notable, following a public comments session in March

2022 where a procession of at least a dozen current and former [redacted] students stood up to tell their own personal experience of sexual assault by classmates, and the ways the adults failed them. One after another, these young adults pleaded for information and conversations centered around consent, removing the stigma of reporting and consistent accountability after a report has been made. It was gut wrenching, as it should've been, and the strongest instance of the “student voice” I have seen yet. These actions from the Superintendent clearly tell [redacted] staff and students that they do not matter, nor does the known harm foisted upon them by ANTI-LGBTQIA sentiment, legislation and hateful actions of a loud, but tiny minority. – Parent of elementary school student (P28)

V. Students

Student 88:

I am a transgender student (I use he/him pronouns), and I have been out at school for 2 years (since 8th grade). My parents are not accepting of me and have not allowed me to use my name in the classroom. I came out secretly to my teachers in 9th grade, and this made me feel a lot safer at school. This new “Parents Bill of Rights” has made it mandatory for my teachers to tell my parents the fact that I use a different name and pronouns. My parents disapproved, of course, and it was a fight for me to be able to be who I am in a place that I’m in almost every day. I already suffer from mental health issues like depression, gender dysphoria, and anxiety, and the ongoing battle of trans rights (MY rights) aren’t making it any better. Although I can “freely” use my name and pronouns in the classroom now (my parents still disapprove), the idea that transgender students have to be forcefully outed, even if school personnel are against it, is ludicrous. The NC state legislature should be ashamed of the harm they are inadvertently causing trans kids like me. – High school student (S88)

Student 89:

Honestly, SB49 makes me scared to sign up for sports, it is hard enough being plus-sized trying out for sports. SB49 just makes me worried about my future.

...

My name is [redacted], and I am a transgender student. I have seen SB49 implemented in many ways. Here is my main example: my teacher was talking about some changes that other teachers may be participating in such as “outing” LGBTQ+ students to their parents or classmates; this includes deadnames and things. They were expressing how their classroom would always be a safe space, and they said they were going to quit if they

were required to "out" anyone. This was surprising to hear as the schools I've been in have always been supportive and had many helplines and opportunity to help you find yourself and have safe places, especially regarding LGBTQ+ people. SB49 just makes me worried about my future. – High school student (S89)

Student 90:

In the leadership circles I run in, club advisors (educators) were well aware of SB49 before it passed. However, no one was making an effort to inform the general population of students about the anti-LGBTQ harm SB49 was designed to carry out. (It's also important to note that about half of our student body identifies with the LGBTQ population.) When I tried to push an informative effort--after hours of drafting a policy overview email and announcement--I was immediately shut down. It was extremely disappointing to witness educators' fear of parental pushback outweigh the genuine harm SB49 has on LGBTQ students. I don't want to be a student in the type of school where students are silenced in their pursuit of equity and educators are legally locked into a timid and complacent position. When the "public" in public education encompasses LGBTQ students, schools should have every right to foundationally respect and serve those students. – High school student (S90)

Student 91:

My teachers have had to warn us that they are required to out students who request to be addressed by their preferred name and pronouns, and as a member of the LGBTQ+ community, it is scary seeing policies like this being implemented. It is already hard enough as it is to feel accepted and happy with yourself because of societal norms and the struggles that come with being queer or trans openly, and knowing that policies like this could restrict myself and other queer youths is terrifying. I am pansexual and am lucky enough to have an accepting support network, but I know many who do not and are scared of coming out or feel ashamed, and all these policies do is stifle and isolate students who are struggling with their identity and safety as a result. – High school student (S91)

Student 92:

Enduring the aftermath of SB49 was a traumatizing experience, that was only increased by the unsupportive stance of my parents. Many of my plans for this year, I'd been waiting for had been canceled by transphobic bigots: I intended to share my truth with my coaches to switch to the team aligned with my true gender and many books I intended to read from my library as an avid reader were removed for "LGBT undertones." Not to

mention, many of the teachers/staff that acted as a safe space for many had to deadname and misgender us out of fear of losing their jobs. – High school student (S92)

Student 93:

I am fortunate enough to have such loving parents that they would not disown me on the grounds of being lgbtq+(I am non-binary and currently questioning my sexuality), however that does not mean they would be entirely supportive of me either. My mother is fine with me being “gay,” so long as I'm never in a relationship with anybody. A very close sentiment to “you can be gay, just not around me.” My father is openly homophobic, so I've never even attempted to come out to him. I am also fortunate enough that my parents don't perceive my gender non-conformity as gender non-conformity, but more so a fashion choice. Even so, I know my parents would be even less supportive of me being non-binary than me being “gay,” so I don't dare come out to them. Within the recent county mandated email alerting parents, I pretended none of my friends could pronounce my legal name so I used the name [redacted] instead, which they begrudgingly accepted. But this forced outing bill could potentially put me in danger or make my parents remove financial backing, which is huge since I'm starting college next year. I understand much of my fear is paranoia, but that does not dismiss it as a feeling. – High school student (S93)

Student 95:

This bill will negatively affect myself and so many of my friends. It stops us from speaking in places where we should feel safe, it means that when we talk about our identities our GSA teacher leader has to step out of the room so that they have plausible deniability. While I personally am safe, this bill means that my friends, some of whom I've had to offer my home to should their parents ever find out about their identity, are now losing their one safe place to express themselves. They already live in fear, and now they are terrified of teachers, authority figures who they should be able to trust, ratting them out to their parents. It keeps them silent, it stops them from being able to express themselves, and as I'm sure you know from the statistics, that means I'm much more likely to lose friends to suicide. – High School Student (S95)

Student 96:

Multiple friends have been reported to admin and outed by them, some even several times. Nicknames have also been banned, “just for good measure.” Our principal [redacted] is transphobic and homophobic. She has made our GSA club no longer feel like as much as a safe place as it is meant to be. She tries to be as strict and enforcing

with her rules as possible. She has asked all the teachers to report uses of other names. Again, including nicknames. – High school student (S96)

Student 97:

I personally have a supportive family who has put my preferred name in PowerSchool, but my friends are no longer feeling safe going by their preferred name and pronouns because they're afraid that they will be outed to their families who are not supportive. These friends are scared for their safety and well-being. – High school student (S97)

Appendix B: October 6, 2023 CSE Letter to SBE and DPI



To: North Carolina Department of Public Instruction
North Carolina State and Local Boards of Education
North Carolina Public School Administrators, Educators, and Staff

From: Christopher A. Brook, Patterson Harkavy, LLP, and Em Seawell, CSE
Consulting Attorney, for the Campaign for Southern Equality (“CSE”)

Contact: Craig White, MSW, Supportive Schools Director, CSE

Media Inquiries: Adam Polaski, Communications and Political Director, CSE

Date: October 6, 2023

RE: **S.B. 49, North Carolina’s “Don’t Say LGBTQ” law, and Title IX**

The recently adopted Senate Bill 49 (“S.B. 49”), better known as North Carolina’s “Don’t Say LGBTQ” law, seeks to radically remake public education in our state. Where public schools have traditionally been places where young people can explore, learn about themselves and the topics that interest them, and begin to find their place as citizens of an increasingly diverse world, S.B. 49 seeks to impose a pall of orthodoxy.

First, the law mandates the creation of a school surveillance infrastructure. Students are no longer free to express themselves in ways challenging gender norms or check out a library book without the risk of educators reporting their activities to their parents. Second, the law prohibits critical instruction by forbidding students, including those who are part of LGBTQ families, from learning about or even seeing examples of role models or families who are not straight and cisgender, or who, like Amelia Earhart, are remarkable in part because of their gender identity. Third, the law empowers schools to punish teachers and administrators who support LGBTQ students.

These provisions, especially when taken together, imperil the well-being and lives of LGBTQ students. In so doing, they foster a hostile educational environment for LGBTQ students in

violation of Title IX.¹ North Carolina public schools, as a consequence, cannot follow these provisions of the “Don’t Say LGBTQ” law without risking their federal educational funding.

Title IX Prohibits Creating Hostile Educational Environments for LGBTQ Students

Few laws are better known and have done more to promote equality in our country than Title IX. Its essential guarantee is now well-known in educational communities: “No person in the United States shall, on the basis of sex, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]” 20 U.S.C. § 1681(a).

What is less well understood is the breadth of Title IX’s anti-discrimination mandate. When considering whether and how to comply with state laws like S.B. 49 that aim to radically remake educational environments, appreciating the scope of Title IX’s protections is imperative.

First, and most straightforwardly, Title IX trumps state laws with contrary mandates. The federal constitution establishes the supremacy of federal laws over conflicting state laws. U.S. Const. art. VI § 2 (“[T]he Laws of the United States . . . shall be the supreme Law of the Land[.]”).

Second, Title IX aims to eliminate discrimination, root and branch. Accordingly, it defines discrimination capaciously to include any “disparate provision of programs, aid, benefits, or services or inequitable application of rules or sanctions.” *Crandell v. N.Y. Coll. of Osteopathic Med.*, 87 F.Supp.2d 304, 314 (S.D.N.Y. Mar. 10, 2000) (citing 45 C.F.R. § 86.31 (2000)).

Third, Title IX and its prohibition on discrimination “on the basis of sex” is interpreted in light of case law from the Title VII workplace discrimination context. *See, e.g., Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (2007) (“We look to case law interpreting Title VII . . . in evaluating a claim brought under Title IX.”). Though focused on the workplace instead of the schoolhouse, Title VII also forbids discrimination “on the basis of . . . sex[.]” 42 U.S.C. § 2000e-2(b).

¹ Though not the focus of this memo, S.B. 49 also raises serious constitutional issues relating to students’ rights to self-expression, access information, and privacy. *Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“It can hardly be argued that . . . students . . . shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (“[S]tudents must always remain free to inquire, to study, to and evaluate, to gain new maturity and understanding.”); *C.N. v. Wolf*, 410 F.Supp.2d 894, 900 (C.D. Cal. Nov. 28, 2005) (holding student plaintiff alleged a viable claim school violated her constitutional right to privacy by disclosing her sexual orientation to mother). And any law that prevents elementary school teachers from saying or sharing materials that contain the words “boys” or “girls”—as S.B. 49 does by barring “[i]nstruction on gender identity[.]” N.C. Gen. Stat. § 115C-76.55—is constitutionally suspect as an overbroad restraint on academic freedom. *Keyishian*, 385 U.S. at 603 (“Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”).

Fourth, as part of prohibiting sex discrimination, Title IX bars discrimination against LGBTQ students. The Supreme Court held in *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1741 (2020) that Title VII’s prohibition on sex discrimination in the workplace also forbade discrimination on LGBTQ status. Writing for a six-justice majority, Justice Neil Gorsuch reasoned that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” *Id.* By the same logic, discrimination against LGBTQ students is impermissible pursuant to Title IX. *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020). North Carolina public school regulations embrace this framework by expressly including any sexual harassment under Title VII or discrimination under Titles VII or IX in their definition of “school violence.” 16 NCAC .0107(a)(29-30).

Fifth, contributing to a hostile educational environment for LGBTQ students constitutes sex discrimination in violation of Title IX. Courts and the Department of Education consider the following in assessing whether there is a hostile educational environment:

- The degree the complained of conduct affects a complainant’s ability to access an educational program or activity. *See, e.g.*, 87 Fed. Reg. 41416. Conduct causing student anxiety or humiliation is pertinent to whether they can fully avail themselves of education programs and activities. *See, e.g., id.; see also Peltier v. Charter Day School, Inc.*, 37 F.4th 104, 129 (4th Cir. 2022) (en banc) (noting actionable Title IX harm includes “emotional and dignitary harm”) (quoting *Grimm*, 972 F.3d at 616).
- The type, frequency, and duration of the complained of conduct. 87 Fed. Reg. 41416.
- The ages of and relationship between the complaining and complained of party. *Id.* As one might expect, offending conduct from an administrator or teacher towards a student is more likely to deny access to educational programs and activities given the “unequal power relationship” between the two. *See, e.g., Crandell*, 87 F.Supp.2d at 319.
- The location of the complained of conduct and the control the school has over the student in that location. 87 Fed. Reg. 41416. Offending conduct occurring in a public space, again intuitively, is more likely to humiliate students. 87 Fed. Reg. 41417. And, because this conduct occurs at school, it is more likely to impact student access to educational programs and activities.

A final note on the assessment of allegedly hostile educational environments: These factors and corresponding instances of offending conduct are not considered in isolation. Instead, “courts have adopted a ‘totality of the circumstances’ approach that rejects the disaggregation of the allegations and requires only that the alleged incidents cumulatively have resulted in the creation of a hostile environment.” *Crandell*, 87 F.Supp.2d at 319.

Sixth, schools violating Title IX not only risk litigation challenging their illegal conduct but also losing their federal educational funding. 42 U.S.C. § 2000d-1. Further, in North Carolina, any educator’s willful violation of a student’s civil rights is an express breach of the Standards of Professional Conduct, and such a finding of illegal or unethical conduct—or failure to report such conduct when an educator observes it—provides a basis for revoking an individual educator’s teaching license. 16 NCAC 06C.0372(a)(8-9), .0602(b)(7).²

In sum, North Carolina schools receiving federal educational funding are bound to follow Title IX over any conflicting state law. Title IX broadly protects LGBTQ students from hostile educational environments. Schools fostering such environments risk their federal educational funding, and individual educators who contribute to Title IX violations risk losing their licenses.

S.B. 49 Exacerbates Pre-Existing Challenges for LGBTQ Students, Creating a Hostile Educational Environment in Violation of Title IX

Even before measures like S.B. 49, LGBTQ students faced challenges at school. Per the 2021 *National School Climate Survey* from the Gay, Lesbian and Straight Education Network (“GLSEN”), LGBTQ students in North Carolina and nationwide have overwhelmingly negative experiences at school, even when anti-LGBTQ laws like S.B. 49 are not in place. A staggering 74.2% of transgender students in the U.S. reported feeling unsafe at school based on their gender. Relatedly, an overwhelming majority (77.9%) of transgender students experienced anti-LGBTQ discrimination at school, which correlated with 1) a nearly threefold increase in absences due to feeling unsafe or uncomfortable, 2) decreased feelings of school belonging, lower self-esteem, higher levels of depression, and 3) a more than twofold increase in students reporting that they seriously considered suicide in the past year. *Id.* Of the LGBTQ students considering dropping out of school, more than half (51.5%) indicated that they were doing so because of a hostile

² School counselors, social workers, nurses, and librarians also have stringent ethical guidelines to adhere to. Am. Sch. Counselor Assoc., *Ethical Standard for School Counselors* (2022) (“Advocate with and on behalf of students to ensure they remain safe at home, in their communities and at school. A high standard of care includes determining what information is shared with parents/guardians and when information creates an unsafe environment[.]”); Nat’l Ass. of Soc. Workers, *Social Workers’ Ethical Responsibilities to Clients* (2021) (“Social workers should act to prevent and eliminate domination of, exploitation of, and discrimination against any person, group, or class on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical ability.”); Nat’l Assoc. of School Nurses, *Code of Ethics* (2021) (“School nurses promote equitable treatment of all students, regardless of health, race, gender, socio-economic status, culture, age, sexual orientation, gender identity, ability, or religion.”); Am. Library Assoc., *Code of Ethics* (2021) (“We uphold the principles of intellectual freedom and resist all efforts to censor library resources” and “protect each library’s users right to privacy and confidentiality with respect to information sought and received and resources consulted, borrowed, acquired or transmitted.”).

school climate, including issues with harassment, unsupportive peers or educators, and discriminatory school policies and practices. *Id.*

The situation is even more dire here in North Carolina. GLSEN’s *National School Climate Survey* report on North Carolina shows that most LGBTQ students in North Carolina experienced anti-LGBTQ harassment in 2021. 72% of respondents experienced harassment on the basis of their sexual orientation, while 55% experienced harassment on the basis of their gender expression. Research from CSE bears this out as well. Nearly half (47%) of LGBTQ North Carolinians who participated in CSE’s 2021 *Coming of Age as an LGBTQ Southerner* survey reported experiencing physical violence at school and 55% reported experiencing verbal or emotional violence due to their LGBTQ identity. No surprise, then, that nearly half (47.7%) of LGBTQ Southerners reported missing school days because they felt unsafe or uncomfortable. *Id.*

Moreover, LGBTQ students facing challenges at school often find no respite at home. Only one in three transgender and non-binary youth say their home affirms their identity. The Trevor Project, *National Survey on LGBTQ Youth Mental Health* (2023). This can have harsh consequences; family abuse and abandonment are a leading cause for why LGBTQ youth comprise 40% of all homeless youth in the United States. Soon Kyu Choi, Bianca D.M. Wilson, Jama Shelton, Gary Gates, *Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness* (2015).

Fortunately, we know ways to mitigate these harms. Eliminating the four main types of stress on LGBTQ youth—including discrimination and physical violence in schools—would decrease suicide attempts among this population by a factor of 12. The Trevor Project, *National Survey on LGBTQ Youth Mental Health* (2023). LGBTQ youth are 40% less likely to attempt suicide if they have *even one* accepting adult in their life. The Trevor Project, *Accepting Adults Reduce Suicide Attempts Among LGBTQ Youth* (2019). More broadly, feeling cared for by teachers significantly decreases negative mental health outcomes for LGBTQ youth. The Trevor Project, *The Relationship Between Caring Teachers and the Mental Health of LGBTQ Students* (2023).

Unfortunately, S.B. 49 attacks these pillars of a safe, strong educational environment. The law contains multiple provisions that require school staff to communicate on a daily basis to LGBTQ students that they are inferior to and require more scrutiny than their straight and cisgender peers. These provisions include:

- Requiring schools to “out” gender non-conforming students, regardless of whether the student objects or doing so imperils the student.³ N.C. Gen. Stat. § 115C-76.45(a)(5).

³ S.B. 49 makes no exception to the requirements that schools both (1) notify a student’s parents and (2) actively facilitate discussion with the student’s parents when the student requests to change their name or pronoun, N.C. Gen. Stat. § 115C-76.45(a)(5), (b)(2), even in the case of foreseeable child abuse or neglect. *See* N.C. Gen. Stat. § 115C-76.45(c)(2) (applying only to “education and health records”). Nor does it make any provision for protecting students from the harm of being outed or from abuse by their peers.

- Mandating school surveillance of student library selections. N.C. Gen. Stat. § 115C-76.25(a)(12).
- Barring instruction on sexual orientation and gender identity through fourth grade.⁴ N.C. Gen. Stat. § 115C-76.55.
- Permitting increased surveillance of textbooks and other instructional materials to target LGBTQ-affirming content. N.C. Gen. Stat. § 115C-76.35(b)(3-4).
- Threatening educators with punishment for supporting LGBTQ students. N.C. Gen. Stat. § 114A-20.

These provisions further marginalize already vulnerable students. They discriminate against transgender and nonbinary students who change their name or pronouns by outing them to their parents rather than allowing them to come out on their own terms, as is their right.⁵ They subject LGBTQ students to hostility inside and outside of the schoolhouse. They bar thorough, affirming education on everything from different types of families to stories about girls overcoming challenges. They cut students off from support, whether it be an affirming book, teacher, or administrator. And, perniciously, S.B. 49 realizes these ends by conscripting teachers and administrators into carrying out its harmful dictates.

We know this will have devastating consequences for LGBTQ student mental health. As discussed above, a more stressful, less supportive environment correlates with a rise in LGBTQ youth school absenteeism, depression, and suicide. The Trevor Project, *National Survey on LGBTQ Youth Mental Health* (2023). Recent data suggests LGBTQ North Carolinians experience such mental health challenges at even higher rates than their peers in other southern states. CSE, *North Carolina State Report, Southern LGBTQ Health Survey* (2019). If there was any doubt, LGBTQ students have spoken loud and clear about how measures like S.B. 49 make them feel.

⁴ Instruction is not defined by S.B. 49. But, in addition to barring teaching about “boys” and “girls,” *supra* n. 1, it also surely (and equally absurdly) bars schools from teaching age-appropriate, inclusive materials like *Red: A Crayon’s Story*, which simply celebrates the beauty of being yourself. T. Keung Hui, *State Education Board Says It Won’t Hear Appeals on Book Challenges. Here’s Why.*, NEWS AND OBSERVER, Oct. 4, 2023 (noting Charlotte-Mecklenburg schools pulled books from elementary schools in response to complaints it violated S.B. 49).

⁵ Indeed, disclosure of private information about an employee’s transgender status establishes a cognizable claim for a hostile work environment under Title VII’s analogous prohibition on sex discrimination. *Roberts v. Clary Cty. Sch. Dist.*, 215 F.Supp.3d 1001, 1016-17 (D. Nev. Oct. 4, 2016). In the public school context, North Carolina law expressly states that educators may disclose such private personal information about students only in situations where disclosure “is necessary for the personal safety of the student or others” and/or complies with all applicable laws and professional standards, *see* 16 NCAC 06C.0602(b)(6); neither condition is met here.

Asked about legislation requiring the outing of LGBTQ students, 56% of transgender and nonbinary youth felt angry, 47% felt nervous and/or scared, 45% felt stressed, and more than a third felt sad. The Trevor Project, *New Poll Illustrates the Impacts of Social & Political Issues on LGBTQ Youth* (2022).

These consequences make plain that S.B. 49 fosters the hostile educational environment for LGBTQ students that Title IX forbids. It does so daily; for instance, reminding transgender and nonbinary students they are not welcome every day when roll is taken and their correct name and pronouns are not used. The cumulative impact of these measures is to frustrate schools' educational mission and LGBTQ students' ability to learn. This means schools cannot comply with Title IX while following the portions of S.B. 49 gratuitously harming LGBTQ students. The choice between Title IX and S.B. 49 is no choice at all; schools must follow Title IX.

Conclusion

Title IX protects LGBTQ students from hostile educational environments. The harmful provisions of S.B. 49 discussed above make it harder for educators to teach and for students to learn by casting a pall over the schoolhouse. In doing so, these provisions violate Title IX. Accordingly, schools receiving federal educational funding in North Carolina cannot comply with these pernicious and dangerous portions of S.B. 49.

Appendix C: October 26, 2023 Email Communication from Allison Schafer, General Counsel of SBE and DPI, to Craig White, CSE

Allison Schafer <Allison.Schafer@dpi.nc.gov>
to me ▾

Oct 26, 2023, 4:36 PM ☆ ↶

Mr. White,

I got your voice mail today. I am out of town at a meeting the rest of this week. This communication is to acknowledge and respond to your email below. I apologize for not responding earlier. We have been distracted and overwhelmed by the many legislative changes that needed to be dealt with very quickly. That said, I have been authorized to provide the following statement on behalf of the State Board of Education and the Department of Public Instruction (DPI):

We are in receipt of the memorandum from the Campaign for Southern Equality, dated October 6, 2023, concerning Senate Bill 49. We appreciate you sharing your concerns regarding this recent legislation. Although the State Board and DPI acknowledge receiving your claim that S.B. 49 violates Title IX, neither entity is the appropriate body to adjudicate your legal position. Such arguments are properly addressed to the U.S. Department of Education or the federal courts. 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.

My best,

Allison Schafer

General Counsel

State Board of Education

Department of Public Instruction

(M) (919) 931-1063

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Appendix D: November 13, 2023 CSE Follow-Up Letter to SBE and DPI



To: Allison Schafer, General Counsel
North Carolina Department of Public Instruction (“DPI”)
North Carolina State Board of Education (“State Board”)

CC: North Carolina Local Boards of Education
North Carolina Public School Administrators, Educators, and Staff

From: Christopher A. Brook, Patterson Harkavy, LLP, and Em Seawell,
Consulting Attorney, for the Campaign for Southern Equality (“CSE”)

Contact: Craig White, MSW, Supportive Schools Director, CSE

Media Inquiries: Adam Polaski, Communications and Political Director, CSE

November 13, 2023

Re: Statewide implementation of Senate Bill 49, North Carolina’s “Don’t Say LGBTQ” law

Dear Ms. Schafer:

Thank you for your response to our memo explaining the ways in which Senate Bill 49 (“S.B. 49,” enacted as Session Law 2023-106) fails to comply with federal law.* We appreciate and will accept your invitation to seek a ruling from the U.S. Department of Education Office of Civil Rights to relieve DPI and the State Board of their obligation to implement S.B. 49 altogether. However, we write to you again to underline how DPI and the State Board have the

* In an October 26 email, you provided CSE with the following statement on behalf of DPI and the State Board of Education:

We are in receipt of the memorandum from the Campaign for Southern Equality, dated October 6, 2023, concerning Senate Bill 49. We appreciate you sharing your concerns regarding this recent legislation. Although the State Board and DPI acknowledge receiving your claim that S.B. 49 violates Title IX, neither entity is the appropriate body to adjudicate your legal position. Such arguments are properly addressed to the U.S. Department of Education or the federal courts. 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.

responsibility to ensure now that S.B. 49 is implemented in a way that avoids, or at least minimizes, both the legal conflicts we have highlighted and the resulting real-life danger to North Carolina's LGBTQ students and families.

I. DPI and the State Board have a legal duty to exercise their administrative judgment and authority to implement S.B. 49 within existing state and federal frameworks.

As your response points out, DPI and the State Board lack the authority to “knowingly fail to comply” with any duly enacted law, whether state or federal. This is precisely why DPI and the State Board are bound to ensure their implementation of S.B. 49, a state law, occurs only in compliance with Title IX, a federal law that supersedes state law under the Supremacy Clause of the United States Constitution.

A. DPI and the State Board have broad discretion over how to implement S.B. 49.

In carrying out this duty, North Carolina law provides DPI and the State Board with wide latitude to determine the specifics of how S.B. 49 is implemented. *See Bring v. North Carolina State Bar*, 348 N.C. 655, 658, 591 S.E.2d 907, 909 (1998) (explaining that because legislative drafters cannot anticipate “every conceivable problem which might arise in the implementation of the legislation,” statutes serve to “provide direction to an administrative body possessing the expertise to adapt the legislative goals to varying circumstances”); *see also Frye Regional Medical Center Inc. v. Hunt*, 350 N.C. 39, 45, 510 S.E.2d 159, 163 (1999) (“The interpretation of a statute given by the agency charged with carrying it out is entitled to great weight.”).

Importantly, in implementing S.B. 49, DPI and the State Board are bound to construct the statute in a way that avoids constitutional concerns. *See North Carolina State Board of Education v. North Carolina*, 371 N.C. 149, 160, 814 S.E.2d 54, 62 (2018). The guiding principle for doing so is to honor the legislature's declaration of its goals, *id.* at 164, 814 S.E.2d at 64, which in the case of S.B. 49 is express:

The General Assembly finds that parental involvement and empowerment is fundamental to the successful education of all students. To strengthen partnerships among parents and school personnel, public school units and all public school unit personnel shall fully support and cooperate in implementing a well-planned, inclusive, and comprehensive program to assist parents and families in effectively participating in their child's education.

G.S. § 115C-76.20. Thus, any application of S.B. 49 that impedes the legislative goal of “assist[ing] parents and families in effectively participating in their child's education” must be avoided, particularly where such a construction raises constitutional concerns.

This goal must also be read in harmony with the General Assembly’s existing clear policy statements, such as the one directing educators to promote school environments that are free from bullying and harassment, defined to include any acts committed by students or school employees that are “reasonably perceived as being motivated by . . . gender, gender identity, [or] sexual orientation” G.S. § 115C-407.15(a); G.S. § 115C-407.14; *see also* G.S. §§ 115C-407.18(e), -407.33 (expressly providing the anti-bullying statutes must be liberally construed to achieve their goals and accord with federal law).

B. DPI and the State Board can and should use the administrative tools at their disposal to narrow implementation of S.B. 49 in a way that respects binding law.

In implementing S.B. 49 to achieve the legislature’s stated goal of assisting public school families in accordance with existing law, state law provides DPI, its superintendent, and the State Board with several powerful tools to enforce statewide compliance with Title IX and other existing legal frameworks, including:

- rule-making, G.S. §§ 115C-12, -21(a)(8);
- making a declaratory ruling on educators’ obligations under potentially conflicting laws and codes of professional conduct, G.S. § 150B-4; and
- issuing uniform guidance to local school administrators for dissemination to local personnel, G.S. §§ 115C-21(b)(6), -276(g).

Rule-making. First, S.B. 49 expressly contemplates that the State Board will make rules to ensure effective implementation of the law. *See* G.S. § 115C-76.30(a) (calling for creation of minimum requirements for parent guide). The State Board also possesses implied rule-making power to provide clarity and ensure legality for those provisions of S.B. 49 that invite conflict with existing law, as highlighted in our October 6 memo. *See In re Declaratory Ruling by N.C. Comm’r of Ins.*, 134 N.C. App. 22, 26, 517 S.E.2d 134, 138 (1999) (“In addition to express powers, administrative agencies have implied powers reasonably necessary for the proper execution of their express purposes.”). This implied grant of administrative authority is broad: even “an asserted power [that] is ‘novel and unprecedented’ does not necessarily mean the action exceeds statutory authority.” *See id.* at 26-27, 517 S.E.2d at 138.

Agencies routinely exercise their implied rule-making power to narrow and explain broad statutory language. For example, North Carolina’s voter ID statute states, “A voter shall be permitted to vote unless the judges of election present unanimously agree that the photo identification presented does not bear a reasonable resemblance to that voter.” G.S. § 163-166.16. The voter ID statute does not go on to define “reasonable resemblance,” nor does it direct the State Board of Elections to issue a rule defining the term. *See id.* Nonetheless, the State Board of Elections used its implied authority to conduct notice-and-comment rule-making, determined that “reasonable resemblance” must be construed narrowly to avoid infringing on the

right to vote, and issued rules binding on the 100 County Boards of Elections that expressly preclude rejection of a voter’s ID because of changes in hairstyle or weight, among other things, or because of a variation in the name on the ID. *See* 08 NCAC 17 .0101(a)(2-3), (c). Importantly, no court order or federal administrative determination was required for the State Board of Elections to lawfully undertake this rule-making process to provide needed clarity to county-level agencies charged with implementing the voter ID statute.

S.B. 49 similarly contains terms that would benefit from clarification and narrow definition through rule-making to minimize infringement on students’ constitutional and Title IX rights. For example:

- ***Process required for implementation.*** Multiple provisions of S.B. 49 require “[g]overning bodies of public school units” to adopt policies and procedures to implement the law, including “consultation with parents, teachers, administrators, and community partners.” *See, e.g.*, G.S. § 115C-76.35. Without clarity on whose responsibility adopting these policies is and what due process is required, various school districts have tasked the school board, superintendent, and/or principals with putting the required policies and procedures in place, and those policies and procedures vary across the state. CSE has received reports that in many districts, the required consultation is not occurring at all.
- ***Removal of material from curriculum.*** S.B. 49 bars “[i]nstruction on gender identity, sexual activity, or sexuality” in kindergarten through fourth grades, but does not define any of those terms. G.S. § 115C-76.55. Orange County elementary schools have severely curtailed safety-focused programs such as “Safe Touch” in an effort to comply with this provision of S.B. 49. *See* Elaina James, *Parents Bill of Rights Leads to Pause of Child Sexual Abuse Prevention Program*, UNC Media Hub (Oct. 27, 2023), <https://tinyurl.com/orangepause>. Johnston County Schools have removed LGBTQ-related material from elementary schools altogether, extending the ban to fifth graders, and broadening their interpretation of “instruction” to include materials in school and classroom libraries. *See* T. Keung Hui, *Johnston passes policy against books on gender identity in elementary school libraries*, News & Observer (Nov. 10, 2023), <https://tinyurl.com/johnstonpolicy>. Instructional materials referencing cisgender identities and heterosexual families remain in place. *See id.*
- ***Exception for emergency health care.*** The General Assembly amended the parental notification requirements of S.B. 49 in the state’s 2023-24 budget to add an exclusion for emergency health situations, but did not specify whether the exclusion extends to emergency mental health situations. *See* S.L. 2023-134, § 7.81.(c). Reflecting this lack of clarity, school counselors in Buncombe County were instructed that in order to comply with S.B. 49, they would not be allowed to conduct emergency threat assessments or suicide assessments without first getting

parental permission — affirmative permission that is not always available on an emergency basis while parents are busy elsewhere during the school day.

- **Notification to parents of name or pronoun change.** S.B. 49 requires school districts to adopt “procedures to notify a parent . . . [p]rior to any changes in the name or pronoun used for a student in school records or by school personnel,” but does not define “change,” “notify,” “school records” or “school personnel.” G.S. § 115C-76.45(a)(5). CSE has received reports that various school districts have interpreted this provision differently and in some cases inconsistently with the plain text of S.B. 49, including:
 - the North Carolina Association of Public Charter Schools instructing its members to go beyond notification and require a signed permission document from a parent or guardian before staff can use a student’s affirmed name or pronouns,
 - a principal calling to notify parents of their children’s affirmed names and pronouns, although there had been no recent change and the parents themselves had previously requested the name change in Powerschool,
 - faculty sponsors of Gender and Sexuality Alliances (GSAs) being told that they must notify parents whose students are participating in the GSA,
 - school counselors reporting they are unsure whether they can still complete a gender support plan for a student,
 - educators declining to use a student’s affirmed name and pronouns even after notification has been sent to the parents, and
 - educators and school districts applying the parental notification provision only in situations where the requested change includes changing a pronoun.
- **Disciplinary action.** S.B. 49 mentions that educators who fail to comply “may be subject to disciplinary action,” but does not specify what disciplinary action that includes, under what conditions it can occur, or what due process must be followed. *See* G.S. § 114A-20.

Rule-making on these unclear provisions of S.B. 49 would be an appropriate exercise of DPI and the State Board’s administrative authority, and — as S.B. 49 itself contemplates, G.S. § 115C-76.35 — would provide an important opportunity for public and internal input about impacts of the law to minimize harm to students.

Declaratory ruling. Second, DPI and the State Board need not wait for a federal court or OCR determination of educators’ obligations under Title IX and applicable codes of professional conduct; DPI has the power itself to make a binding agency determination of what S.B. 49 means in the context of existing legal and ethical frameworks. *See* G.S. § 150B-4. At minimum, this determination could include reaffirming the uncontroversial legal position that (1) educators are

bound to comply with Title IX and North Carolina's anti-bullying statute, (2) S.B. 49 must be read and applied not to infringe student protections under those laws, and (3) in so doing, educators must avoid taking any actions that would create a hostile educational environment based on sex, sexual orientation, gender identity, or any other legally protected grounds.

Alternatively, should DPI not wish to pass upon the legal implications of S.B. 49 in the first instance, the Superintendent of Public Instruction may use her authority to seek an advisory opinion from the Attorney General. *See* G.S. § 114-2(5) (any state officer may seek the Attorney General's legal opinion); G.S. § 115C-19 (superintendent is a state officer).

Uniform guidance. Third, DPI and the State Board have not just the power but a duty to provide uniform guidance to local school districts to ensure consistency in implementation of S.B. 49. G.S. §§ 115C-21(b)(6), -276(g). Temporary guidance could alleviate immediate concerns while DPI and the State Board undertake rule-making and issue a declaratory ruling, to be replaced by more extensive guidance after those processes conclude. At minimum, guidance is needed to address educators' outstanding questions as described above, which if not clearly and promptly addressed create a risk of physical harm to students as well as a hostile educational environment under Title IX.

C. DPI and the State Board may decline to enforce unlawful provisions of S.B. 49.

Lastly, to the extent that S.B. 49 unavoidably conflicts with federal law, there is precedent for agencies declining to enforce statutory provisions that they believe violate higher legal authority. *Cf. Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 Op. O.L.C. 199 (1994) (discussing federal precedents dating from Reconstruction through the 1990s), <https://tinyurl.com/declinetoenforce>. The North Carolina Constitution contains the same separation of powers and Take Care Clause that at the federal level have supported the executive's authority to decline to enforce unconstitutional statutes. *Compare* N.C. Const. Art. II, § 5(4) *with* U.S. Const. Art. II, § 3.

This power has been used in North Carolina in recent years in a case involving transgender students: In 2016, the University of North Carolina System publicly — and without an OCR ruling or court order — declined to enforce provisions of House Bill 2 that raised Title VII and Title IX concerns. *See* UNC Defs.' Br. in Resp. to Pls.' Mot. for Prelim. Inj., *Carcaño v. McCrory*, No. 1:16-cv-236, ECF No. 50 (M.D.N.C. Jun. 9, 2016) (explaining grounds for non-enforcement of duly enacted statute), <https://tinyurl.com/uncwillnotenforce>; Jonathan Drew, *UNC system says it won't enforce transgender restroom rules*, Associated Press (May 27, 2016), <https://tinyurl.com/hb2precedent>. And in an ongoing example of a state agency declining to enforce a duly enacted state law under the Supremacy Clause, the North Carolina State Board of Elections has long declined to enforce the literacy test in the North Carolina Constitution because

it conflicts with the federal Voting Rights Act of 1965, a position that agency took even where the U.S. Supreme Court had previously specifically held North Carolina’s version of the literacy test was constitutional. *See Lassiter v. Northampton Cnty. Bd. of Elections*, 360 U.S. 45 (1959) (holding North Carolina’s literacy test constitutional before passage of the Voting Rights Act). *Compare* N.C. Const. Art. VI, § 4 (continuing to require literacy test as a prerequisite for voting) *with* 52 U.S.C. § 10303 (prohibiting literacy tests as prerequisites for voting).

In a firmly grounded reading of state law, the State Board has already publicly contemplated its non-enforcement of the decisions it will make in parental concern hearings under S.B. 49. *See* Greg Childress, *State Board of Ed attorney informs panel it lacks authority to enforce Parents’ Bill of Rights*, NC Newswire (Oct. 4, 2023), <https://tinyurl.com/nonenforcement>. Such a determination of where the law starts and stops, including when that results in non-enforcement of one or more provisions of a duly enacted state law in deference to a higher legal authority, is squarely within the scope of DPI’s and the State Board’s authority with respect to the legally dubious provisions of S.B. 49. The North Carolina Constitution expressly contemplates such a result in the oath of office required for all public school officials:

I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina *not inconsistent therewith*, and that I will faithfully discharge the duties of my office as _____, so help me God.

N.C. Const. Art. VI, § 7 (emphasis added).

II. Without intervention from DPI and the State Board, implementation of S.B. 49 will be uneven across the state’s more than 100 school districts and 200 charter schools, inviting overcompliance and a hostile environment for LGBTQ students.

Absent a transparent analysis of educators’ obligations under S.B. 49 and clear guidance from administrators, front-line educators face an impossible choice between (1) on one hand, erring on the side of complying with Title IX, their codes of ethics, and their training by responding appropriately depending on the circumstances, and (2) on the other hand, erring on the side of complying with their individual interpretations of the unclear requirements of S.B. 49. If DPI and the State Board do not provide guidance on this question, it will be left up to already overburdened individual school boards, individual charter schools, individual superintendents and principals, individual school counselors, individual social workers, individual teachers, and other individual educators to each interpret what the law means and what is required of them. As the burden of legal interpretation is passed down, the risks of misunderstanding and non-compliance with the law go up. This uncertainty provides fertile ground for inconsistency in application across the state and risks contributing to a hostile educational environment for LGBTQ students in violation of Title IX. *See* October 6 CSE memo.

To be sure, there are steps local school boards and administrators can take to improve uniformity within at least their limited jurisdictions if needed. Any aggrieved person in one of the more than 100 school districts in the state could petition the State Board for a declaratory ruling, G.S. § 150B-4, and any of the more than 100 superintendents or school boards could separately request rule-making or other guidance from above, G.S. § 150B-20. That such requests could come to DPI and the State Board at any moment only underlines the need for proactive agency action now.

At bottom, local educators cannot and will not stand idly by when they see students being harmed. *See, e.g.*, G.S. § 115C-407.15(d) (“A school employee who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior shall report the incident to the appropriate school official.”). That LGBTQ students face higher rates of bullying, harassment, and stigma is well documented. *See* October 6 CSE memo. So are the higher rates of anxiety, depression, self-harm, and suicide among LGBTQ youths. *See id.* If DPI and the State Board fail to use their administrative authority to guide implementation of the law in a way that respects Title IX and other existing legal protections, they will bear responsibility for contributing to these dire statistics and a hostile educational environment for LGBTQ students in North Carolina.

To protect students’ well-being and further S.B. 49’s stated purpose of assisting public school families, we ask DPI and the State Board to (1) immediately issue temporary guidance that confirms educators’ responsibility to comply with Title IX even as S.B. 49 takes effect, and (2) begin the process of considering the legal and practical implications of S.B. 49, including an opportunity for meaningful input from members of the public on how the law will impact them, before issuing a declaratory ruling and permanent guidance..

We look forward to your response and stand ready to work with you to protect North Carolina’s LGBTQ students and families from further harm.

Respectfully,



Christopher A. Brook



Em Seawell

Campaign for Southern Equality

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2023-106
SENATE BILL 49**

AN ACT TO ENUMERATE THE RIGHTS OF PARENTS TO DIRECT THE UPBRINGING,
EDUCATION, HEALTH CARE, AND MENTAL HEALTH OF THEIR MINOR
CHILDREN.

The General Assembly of North Carolina enacts:

PART I. PARENTS' BILL OF RIGHTS

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

**"Chapter 114A,
"Parents' Bill of Rights."**

"§ 114A-1. Definitions.

The following definitions apply in this Article:

- (1) Reserved for future codification purposes.
- (2) Child. – A person less than 18 years of age who has not been emancipated pursuant to Article 35 of Chapter 7B of the General Statutes.
- (3) Reserved for future codification purposes.
- (4) Reserved for future codification purposes.
- (5) Parent. – A person who has legal custody of a child, including a natural parent, adoptive parent, or legal guardian.
- (6) State. – The State, any of its political subdivisions, or any public school unit.

"§ 114A-10. Parents' bill of rights.

A parent has the right to the following:

- (1) To direct the education and care of his or her child.
- (2) To direct the upbringing and moral or religious training of his or her child.
- (3) To enroll his or her child in a public or nonpublic school and in any school choice options available to the parent for which the child is otherwise eligible by law in order to comply with compulsory attendance laws, as provided in Part 1 of Article 26 of Chapter 115C of the General Statutes.
- (4) To access and review all education records, as authorized by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, relating to his or her child.
- (5) To make health care decisions for his or her child, unless otherwise provided by law, including Article 1A of Chapter 90 of the General Statutes.
- (6) To access and review all medical records of his or her child, as authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191, as amended, except as follows:
 - a. If an authorized investigator requests that information not be released to a parent because the parent is the subject of an investigation of either of the following:
 1. A crime committed against the child under Chapter 14 of the General Statutes.



2. An abuse and neglect complaint under Chapter 7B of the General Statutes.
 - b. When otherwise prohibited by law.
- (7) To prohibit the creation, sharing, or storage of a biometric scan of his or her child without the parent's prior written consent, except as authorized pursuant to a court order or otherwise required by law, including G.S. 7B-2102 and G.S. 7B-2201.
- (8) To prohibit the creation, sharing, or storage of his or her child's blood or deoxyribonucleic acid (DNA) without the parent's prior written consent, except as authorized pursuant to a court order or otherwise required by law, including G.S. 7B-2201.
- (9) To prohibit the creation by the State of a video or voice recording of his or her child without the parent's prior written consent, except a recording made in the following circumstances:
 - a. During or as part of a court proceeding.
 - b. As part of an investigation under Chapter 7B or Chapter 14 of the General Statutes.
 - c. When the recording will be used solely for any of the following purposes:
 1. A safety demonstration, including one related to security and discipline on educational property.
 2. An academic or extracurricular activity.
 3. Classroom instruction.
 4. Photo identification cards.
 5. Security or surveillance of buildings, grounds, or school transportation.
- (10) To be promptly notified if an employee of the State suspects that a criminal offense has been committed against his or her child, unless the incident has first been reported to law enforcement or the county child welfare agency, and notification of the parent would impede the investigation.

"§ 114A-15. Limitations on the right to parent.

- (a) The requirements of this Article do not authorize a parent to do any of the following:
 - (1) Engage in unlawful conduct.
 - (2) Abuse or neglect the child, as defined in Chapter 7B of the General Statutes.
- (b) The requirements of this Article do not prohibit the following:
 - (1) A State official or employee from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
 - (2) A court of competent jurisdiction from acting in its official capacity within the reasonable and prudent scope of its authority or issuing an order otherwise permitted by law.

"§ 114A-20. Employee penalties.

An employee of the State who encourages, coerces, or attempts to encourage or coerce a child to withhold information from his or her parent may be subject to disciplinary action."

PART II. PARENTAL GUIDES AND NOTIFICATIONS

SECTION 2.(a) Subchapter III of Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 7B.

"Public School Unit Requirements.

"Part 1. Definitions.

"§ 115C-76.1. Definitions.

As used in this Article, the following definitions apply:

- (1) Reserved for future codification purposes.
- (2) Child. – A person less than 18 years of age who has not been emancipated pursuant to Article 35 of Chapter 7B of the General Statutes.
- (3) Reserved for future codification purposes.
- (4) Reserved for future codification purposes.
- (5) Parent. – A person who has legal custody of a child, including a natural parent, adoptive parent, or legal guardian.
- (6) Principal. – A school administrator employed as a principal of a school, as provided in Article 19 of this Chapter, or the staff member with the highest decision-making authority at a school, if there is no principal.
- (7) School personnel. – Any of the following:
 - a. An employee of a public school unit, whether full-time or part-time, including substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.
 - b. An independent contractor or employee of an independent contractor of a public school unit, if the independent contractor carries out duties customarily performed by school personnel and has significant access to students, whether paid with federal, State, local, or other funds.
- (8) Superintendent. – Any of the following:
 - a. A superintendent of a local school administrative unit, as provided in Article 18 of this Chapter, or designee.
 - b. The staff member with the highest decision-making authority for a public school unit, if there is no superintendent or designee.

"Part 3. Parental Involvement in Public School Units.

"§ 115C-76.20. Priority of parental involvement in public school.

(a) The General Assembly finds that parental involvement and empowerment is fundamental to the successful education of all students. To strengthen partnerships among parents and school personnel, public school units and all public school unit personnel shall fully support and cooperate in implementing a well-planned, inclusive, and comprehensive program to assist parents and families in effectively participating in their child's education.

(b) To ensure active engagement and timely provision of information that parents can use to improve success for their child, public school units shall comply with the requirements of this Part to do all of the following:

- (1) Inform parents of their legal rights and responsibilities with regards to their child's education.
- (2) Provide a parent's guide for student achievement annually to parents to provide information parents need to know about their child's educational progress and how they can help their child to succeed in school.
- (3) Develop policies to effectively involve parents in schools and their child's education.

"§ 115C-76.25. Parent legal rights for their child's education.

(a) Parents have legal rights with regards to their child's education, including the following:

- (1) The right to consent or withhold consent for participation in reproductive health and safety education programs, consistent with the requirements of G.S. 115C-81.30.
- (2) The right to seek a medical or religious exemption from immunization requirements, consistent with the requirements of G.S. 130A-156 and G.S. 130A-157.

- (3) The right to review statewide standardized assessment results as part of the State report card.
- (4) The right to request an evaluation of their child for an academically or intellectually gifted program, or for identification as a child with a disability, as provided in Article 9 of this Chapter.
- (5) The right to inspect and purchase public school unit textbooks and other supplementary instructional materials, as provided in Part 3 of Article 8 of this Chapter.
- (6) The right to access information relating to the unit's policies for promotion or retention, including high school graduation requirements.
- (7) The right to receive student report cards on a regular basis that clearly depict and grade the student's academic performance in each class or course, the student's conduct, and the student's attendance.
- (8) The right to access information relating to the State public education system, State standards, report card requirements, attendance requirements, and textbook requirements.
- (9) The right to participate in parent-teacher organizations.
- (10) The right to opt in to certain data collection for their child, as provided in Part 5 of this Article and Article 29 of this Chapter.
- (11) The right for students to participate in protected student information surveys only with parental consent, as provided in Part 5 of this Article.
- (12) The right to review all available records of materials their child has borrowed from a school library.

(b) Public school units shall (i) allow parents to exercise these rights and (ii) make the rights contained in this section available to parents electronically or by displaying the information on the website of the public school unit.

"§ 115C-76.30. Parent's guide for student achievement.

(a) The State Board of Education shall develop minimum requirements for public school units for a parent's guide to student achievement to provide what parents need to know about their child's educational progress and how they can help their child to succeed in school. These minimum requirements shall include at least the following:

- (1) Parental information regarding the following:
 - a. Requirements for his or her child to be promoted to the next grade, including the requirements of Part 1A of Article 8 of this Chapter.
 - b. The course of study, textbooks, and other supplementary instructional materials for his or her child and the policies for inspection and review of those materials.
 - c. Progress of his or her child toward achieving State and unit expectations for academic proficiency, including policies for student assessment, and his or her child's assessment results, report cards, and progress reports.
 - d. Qualifications of his or her child's teachers, including licensure status.
 - e. School entry requirements, including required immunizations and the recommended immunization schedule.
- (2) Parental actions that can do the following:
 - a. Strengthen the child's academic progress, especially in the area of reading as provided in Part 1A of Article 8 of this Chapter.
 - b. Strengthen the child's citizenship, especially social skills and respect for others.
 - c. Strengthen the child's realization of high expectations and setting lifelong learning goals.

- d. Place a strong emphasis on the communication between the school and the home.
- (3) Services available for parents and their children, such as family literacy services; mentoring, tutoring, and other academic reinforcement programs; college planning, academic advisement, and student counseling services; and after-school programs.
- (4) Opportunities for parental participation, such as parenting classes, adult education, school advisory councils, and school volunteer programs.
- (5) Opportunities for parents to learn about rigorous academic programs that may be available for their child, such as honors programs, Career and College Promise and other dual enrollment opportunities, advanced placement, Advanced International Certificate of Education (AICE) courses, International Baccalaureate, North Carolina Virtual High School courses, and accelerated access to postsecondary education.
- (6) Educational choices available to parents, including each type of public school unit available to residents of the county in which the child lives and nonpublic school options, educational choice options offered within the public school unit, and scholarship grant programs under Part 2A of Article 39 and Article 41 of this Chapter.
- (7) Rights of students who have been identified as students with disabilities, as provided in Article 9 of this Chapter.
- (8) Contact information for school and unit offices.
- (9) Resources for information on the importance of student health and other available resources for parents, including the following information on available immunizations and vaccinations:
 - a. A recommended immunization schedule in accordance with the United States Centers for Disease Control and Prevention recommendations.
 - b. Information about meningococcal meningitis and influenza, as required by G.S. 115C-375.4.

(b) The State Board shall update the minimum requirements on an annual basis and shall provide the requirements to public school units no later than May 1 annually.

(c) Each public school unit shall provide to parents, students, and school personnel at the beginning of each school year a parent guide for student achievement that meets the following requirements:

- (1) Includes, at a minimum, the State Board requirements developed as provided in subsection (a) of this section and policies developed by the governing body as provided in G.S. 115C-76.35.
- (2) Is understandable to students and parents.
- (3) Is provided in writing to the parent.
- (4) Is discussed at the beginning of each school year in meetings of students, parents, and teachers.

"§ 115C-76.35. Public school unit policies to increase parental involvement.

(a) Governing bodies of public school units shall, in consultation with parents, teachers, administrators, and community partners, develop and adopt policies to promote parental involvement and empowerment in the public school unit. The policies shall provide for parental choices and establish parental responsibilities. Policies that provide for parental involvement shall include the following:

- (1) Providing links to parents for community services.
- (2) Establishing opportunities for parental involvement in the development, implementation, and evaluation of family involvement programs.

- (3) Establishing opportunities for parents to participate on school advisory councils and in school volunteer programs and other activities.
- (b) Governing bodies of public school units shall establish policies to do all of the following:
- (1) Provide for parental participation in their child's education to improve parent and teacher cooperation in areas such as homework, school attendance, and discipline that aligns with the parent guide for student achievement required by G.S. 115C-76.30.
 - (2) Require principals to effectively communicate to parents the manner in which textbooks are used to implement the school's curricular objectives.
 - (3) Establish a procedure for parents to learn about their child's course of study and the source of any supplementary instructional materials. This procedure shall include the process for parents to inspect and review all textbooks and supplementary instructional materials that will be used in their child's classroom. The policy shall be available for in-person review by parents at the school site and publicly available on the school's website. For the purposes of this section, a textbook is as defined in G.S. 115C-85 and supplementary instructional materials include supplementary textbooks, periodicals, audiovisual materials, and other supplementary materials used for instructional purposes.
 - (4) Establish a means for parents to object to textbooks and supplementary instructional materials consistent with the requirements of G.S. 115C-98.
 - (5) Establish a process for parents to review materials for and to consent or withhold consent for participation in reproductive health and safety education programs consistent with the requirements of G.S. 115C-81.30.
 - (6) Establish a process for parents to learn about the nature and purpose of clubs and activities offered at their child's school, including both curricular and extracurricular activities.

"§ 115C-76.40. Time lines for parental requests for information.

(a) A parent may request in writing from the principal of the school in which his or her child is enrolled any of the information the parent has the right to access, as provided in this Part. A principal, within 10 business days, shall either (i) provide the requested information to the parent or (ii) provide an extension notice to the parent that, due to the volume or complexity of the request, the information will be provided no later than 20 business days from the date of the parental request.

(b) If the principal (i) denies or fails to respond to the request for information within 10 business days or (ii) fails to provide information within 20 business days following an extension notice as provided in subsection (a) of this section, the parent may request in writing any of the information the parent has the right to access, as provided in this Part, from the superintendent, along with a statement specifying the time frame of the denial or failure to provide information by the principal.

(c) If the superintendent denies or does not respond to the request for information within 10 business days, the parent may appeal the denial or lack of response to the governing body of the public school unit no later than 20 business days from the date of the request to the superintendent as provided in subsection (b) of this section. The governing body shall place the parent's appeal on the agenda for the next meeting of the body occurring more than three business days after submission of the appeal.

(d) The governing body shall establish, by policy, procedures governing requests for information and appeals that reflect the requirements of this section. The governing body may designate the process to be used by parents when submitting requests for information and shall

display information on the procedures for requests for information and appeals along with other parental rights, as required by G.S. 115C-76.25.

(e) A decision of a governing body under this section is final and is not subject to judicial review.

"Part 4. Notifications of Student Physical and Mental Health.

"§ 115C-76.45. Notifications of student physical and mental health.

(a) The governing body of a public school unit shall adopt procedures to notify a parent of the following:

- (1) At the beginning of each school year, notice of each health care service offered at his or her child's school and the means for the parent to provide consent for any specific service. A parent's consent to a health care service does not waive the parent's right to access his or her child's educational records or health records or to be notified of changes in his or her child's services or monitoring.
- (2) At the beginning of each school year, procedures to exercise the parental remedies provided by G.S. 115C-76.60.
- (3) Prior to administration to students in kindergarten through third grade, a copy of any student well-being questionnaire or health screening form and the means for the parent to consent to the use of the questionnaire or form for his or her child.
- (4) Prior to or contemporaneous with changes, notice of changes in services or monitoring related to his or her child's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment for that child.
- (5) Prior to any changes in the name or pronoun used for a student in school records or by school personnel, notice to the parent of the change.

(b) In accordance with the right of parents provided in Chapter 114A of the General Statutes, the procedures shall include a requirement that school personnel do one or both of the following:

- (1) Encourage a child to discuss issues related to the child's well-being with his or her parent.
- (2) Facilitate discussion of the issue with the child's parents.

(c) The procedures shall not prohibit parents from accessing any of their child's education and health records created, maintained, or used by the public school unit, except as follows:

- (1) As limited by G.S. 114A-10(6)a.
- (2) When a reasonably prudent person would believe that disclosure would result in the child becoming an abused juvenile or neglected juvenile, as those terms are defined in G.S. 7B-101.

(d) The governing body and public school unit shall not adopt procedures or forms that do any of the following:

- (1) Prohibit school employees from notifying a parent about his or her child's mental, emotional, or physical health or well-being or a change in related services or monitoring.
- (2) Encourage or have the effect of encouraging a child to withhold from that child's parent information about his or her mental, emotional, or physical health or well-being or a change in related services or monitoring.

(e) School personnel shall not discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.

"§ 115C-76.50. Student support services training.

Student support services training developed or provided by a public school unit to school personnel shall adhere to student services guidelines, standards, and frameworks established by the Department of Public Instruction.

"§ 115C-76.55. Age-appropriate instruction for grades kindergarten through fourth grade.

Instruction on gender identity, sexual activity, or sexuality shall not be included in the curriculum provided in grades kindergarten through fourth grade, regardless of whether the information is provided by school personnel or third parties. For the purposes of this section, curriculum includes the standard course of study and support materials, locally developed curriculum, supplemental instruction, and textbooks and other supplementary materials, but does not include responses to student-initiated questions.

"§ 115C-76.60. Remedies for parental concerns.

(a) The governing body of a public school unit shall adopt procedures for a parent to notify the principal at his or her child's school regarding concerns about a public school unit's procedure or practice under this Part and a process for resolving those concerns within seven days of the date of notification by the parent. If the parental concern has not been resolved within 30 days following the date of notification by the parent, the public school unit shall provide a statement of the reasons for not resolving the concern.

(b) If a concern is not resolved by the public school unit within 30 days, a parent may do either of the following:

(1) Notify the State Board of Education of the concern and request a parental concern hearing. The State Board shall establish rules for parental concern hearings. At a minimum, the rules shall require the following:

a. The State Board of Education shall appoint a qualified hearing officer. To qualify as a hearing officer, an individual must be a member in good standing of the North Carolina State Bar with demonstrated experience in education or administrative law within the last five years.

b. The hearing shall be conducted in accordance with rules established by the State Board.

c. The hearing officer shall determine facts related to the dispute over the public school unit's procedure or practice, consider information provided by the public school unit, and render a recommended decision for resolution to the State Board of Education within 30 days after assignment to the parental concern hearing.

d. The State Board shall approve or reject the recommended decision at its next regularly scheduled board meeting held more than seven days after receipt of the recommended decision.

e. The public school unit shall pay for the costs of the hearing officer.

(2) Bring an action against the public school unit as provided in Article 26 of Chapter 1 of the General Statutes for a declaratory judgment that the unit's procedure or practice violates this Part. The court may award injunctive relief to a parent and shall award reasonable attorneys' fees and costs to a parent awarded injunctive relief.

(c) The provisions of this section are in addition to any other remedies or procedures authorized or permitted by law.

"Part 5. Notification Requirements for Parental Options.

"§ 115C-76.65. Parental rights to opt-in to protected information surveys.

(a) The following definitions shall apply in this section:

(1) Adult student. – An enrolled student who is 18 years of age or older or is an emancipated minor.

- (2) Protected information survey. – A survey, analysis, or evaluation that reveals information concerning any of the following:
- a. Political affiliations or beliefs of the student or the student's parent.
 - b. Mental or psychological problems of the student or the student's family.
 - c. Sex behavior or attitudes.
 - d. Illegal, antisocial, self-incriminating, or demeaning behavior.
 - e. Critical appraisals of other individuals with whom respondents have close family relationships.
 - f. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.
 - g. Religious practices, affiliations, or beliefs of the student or student's parent.
 - h. Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program.

(b) The public school unit shall make the following available to parents and adult students at least 10 days prior to administration of a protected information survey. The public school unit shall provide opportunities for review of the following both electronically and in person:

- (1) The process for providing consent to participation in the protected information survey.
- (2) The full text of the protected information survey.

(c) No student shall be permitted to participate in a protected information survey without the prior written or electronic consent of the parent or the adult student.

(d) The requirements of this section are in addition to the rights provided to parents and students under the Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h.

"Part 6. Reporting Requirements.

"§ 115C-76.70. Reporting requirements.

(a) Each public school unit shall report annually by September 15 the following information to the State Board of Education in a format designated by the State Board:

- (1) The most current version of the policies and procedures adopted as required by this Article with any modifications of the policy or procedure from the prior year's submission clearly delineated.
- (2) The following information from the prior school year:
 - a. The number of appeals to the governing body under G.S. 115C-76.40 and the percentage of appeals decided in favor of the parent and in favor of the administration in the prior school year.
 - b. The number of statements provided to parents as required by G.S. 115C-76.60(a).
 - c. The number of parental concern hearings involving the public school unit as provided in G.S. 115C-76.60(b)(1).
 - d. The number of actions brought against the public school unit as provided in G.S. 115C-76.60(b)(2) and the number of declaratory judgments entered against the public school unit.

(b) The State Board of Education shall report annually by November 15 to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations on the following:

- (1) A summary of each data point received from public school units pursuant to subsection (a) of this section.
- (2) Identification of any trends in noncompliance.
- (3) An appendix of each public school unit's report."

SECTION 2.(b) G.S. 115C-150.16, as enacted by S.L. 2023-10, reads as rewritten:
"§ 115C-150.16. **Applicability of Chapter.**

Except as otherwise provided in this ~~Article~~, Article and Article 7B of this Chapter, the requirements of this Chapter shall not apply to the schools for the deaf and blind. Schools for the deaf and blind shall be considered a State agency, as defined in G.S. 143C-1-1, and shall comply with all requirements for State agencies unless otherwise specified in this Article. Schools for the deaf and blind shall not be considered local school administrative units."

SECTION 2.(c) G.S. 115C-218.10 reads as rewritten:
"§ 115C-218.10. **Charter school exemptions.**

Except as provided in this Article and Article 7B of this Chapter, and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit."

SECTION 2.(d) G.S. 115C-238.60(b) reads as rewritten:

"(b) Except as otherwise provided in this ~~Part~~, Part and Article 7B of this Chapter, a regional school is exempt from statutes and rules applicable to a local board of education or local school administrative unit."

SECTION 2.(e) G.S. 115C-402.15 reads as rewritten:

"§ 115C-402.15. **Parental notification regarding rights to student records and opt-out opportunities.**

(a) Annual Parental Notification. – Local boards of education shall annually provide parents, by a method reasonably designed to provide actual notice, information on parental rights under State and federal law with regards to student records and opt-out opportunities for disclosure of directory information as provided under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and notice and ~~opt-out~~ opt-in opportunities for surveys covered by G.S. 115C-76.65 and the Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h.

(b) Notice Content. – The notice shall include information on parental rights under State and federal law to:

- (1) Inspect and review education records.
- (2) Seek to amend inaccurate education records.
- (3) Provide written consent prior to disclosure of personally identifiable information from education records, except as otherwise provided by law. Information shall be included on disclosure of directory information and parental rights to opt out of disclosure of directory information.
- (4) File a complaint with the U.S. Department of Education concerning alleged failures to comply with the Family Educational Rights and Privacy Act.
- (5) Receive notice and the opportunity to ~~opt-out~~ opt in prior to the participation of the student in a protected information survey under G.S. 115C-76.65 and 20 U.S.C. § 1232h.

SECTION 2.(f) G.S. 116-239.5(d) reads as rewritten:

"(d) Except as otherwise provided in this ~~Article~~, Article and Article 7B of Chapter 115C of the General Statutes, the Subcommittee, the chancellor of each constituent institution that operates a laboratory school, and the laboratory school are exempt from statutes and rules applicable to a local board of education or local school administrative unit."

SECTION 2.(g) Section 6(d) of S.L. 2018-32 is amended by adding a new subdivision to read:

"(3a) Article 7B, Public School Unit Requirements."

SECTION 2.(h) By June 30, 2024, the Department of Public Instruction shall review and update, as necessary, all of the following in accordance with this act:

- (1) School counseling frameworks and standards.
- (2) Educator practices and professional conduct principles.

- (3) Other student services and school personnel guidelines, standards, or frameworks.

SECTION 2.(i) This section is effective when it becomes law and applies beginning with the 2023-2024 school year.

PART III. PARENTAL AUTHORIZATION FOR HEALTH CARE OF MINORS

SECTION 3.(a) Article 1A of Chapter 90 of the General Statutes is amended by adding a new Part to read:

"Part 3. Parental Consent for Treatment.

"§ 90-21.10A. Definitions.

The following definitions apply in this Article:

- (1), (2) Reserved for future codification purposes.
- (3) Health care facility. – A health care facility, licensed under Chapter 131E or 122C of the General Statutes, where health care services are provided to patients, including:
 - a. An agent or employee of the health care facility that is licensed, certified, or otherwise authorized to provide health care services.
 - b. The officers and directors of a health care facility.
- (4) Health care practitioner. – An individual who is licensed, certified, or otherwise authorized under this Chapter, Chapter 90B, Chapter 90C, or Chapter 115C of the General Statutes to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program, or an agent or employee of that individual.
- (5) Minor. – Any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 35 of Chapter 7B of the General Statutes.
- (6) Parent. – A minor's parent, guardian, or person standing in loco parentis. A person standing in loco parentis is a person who has assumed parental responsibilities, including support and maintenance of the minor.
- (7) Treatment. – Any medical procedure or treatment, including X-rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a health care practitioner, that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where the health care practitioner administers treatment to the minor child.

"§ 90-21.10B. Parental consent for treatment.

(a) Except as otherwise provided in this Article or by court order, a health care practitioner shall not provide, solicit, or arrange treatment for a minor child without first obtaining written or documented consent from that minor child's parent.

(b) Except as otherwise provided in this Article or by court order, a health care facility shall not allow treatment to be performed on a minor child in its facility without first obtaining written or documented consent from that minor child's parent.

(c) This section does not apply to services provided by a clinical laboratory unless the services are delivered through a direct encounter with the minor child at the clinical laboratory facility.

"§ 90-21.10C. Penalty.

A health care practitioner or other person that violates this section is subject to disciplinary action by the board that licensed, certified, or otherwise authorized the health care practitioner to provide treatment, including a fine of up to five thousand dollars (\$5,000)."

SECTION 3.(b) This section becomes effective December 1, 2023, and applies to violations committed on or after that date.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act becomes effective August 15, 2023.

In the General Assembly read three times and ratified this the 3rd day of July, 2023.

s/ Carl Ford
Presiding Officer of the Senate

s/ Erin Paré
Presiding Officer of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 5:57 p.m. this 16th day of August, 2023.

s/ Mr. James White
House Principal Clerk

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2023-109
HOUSE BILL 574**

AN ACT TO PROTECT OPPORTUNITIES FOR WOMEN AND GIRLS IN ATHLETICS.

The General Assembly of North Carolina enacts:

PART I. ATHLETIC ELIGIBILITY IN MIDDLE AND HIGH SCHOOL

SECTION 1.(a) G.S. 115C-12(23) is amended by adding the following new sub-subdivisions to read:

- "e. All teams participating in interscholastic or intramural athletic activities shall comply with the following:
 - 1. Each team shall be expressly designated by the biological sex of the team participants as one of the following:
 - I. Males, men, or boys.
 - II. Females, women, or girls.
 - III. Coed or mixed.
 - 2. Athletic teams designated for females, women, or girls shall not be open to students of the male sex.
 - 3. For purposes of this sub-subdivision, a student's sex shall be recognized based solely on the student's reproductive biology and genetics at birth.
- f. A student who is deprived of an athletic opportunity or suffers or is likely to suffer from any direct or indirect harm as a result of a violation of sub-subdivision e. of this subdivision may assert that violation as a cause of action for remedies provided for in sub-subdivision i. of this subdivision.
- g. A student who is subjected to retaliation or other adverse action by a public school unit, administering organization as defined in G.S. 115C-407.50, or other organization as a result of reporting a violation of sub-subdivision e. of this subdivision to an employee or representative of the public school unit, administering organization, or to any local, State, or federal agency with oversight of the public school unit shall have a cause of action for remedies provided for in sub-subdivision i. of this subdivision.
- h. Any public school unit or its representatives or employees who suffer any direct or indirect harm for complying with sub-subdivision e. of this subdivision shall have a cause of action for remedies provided for in sub-subdivision i. of this subdivision.
- i. Any person who brings a cause of action pursuant to sub-subdivisions f. through h. of this subdivision, within two years of the date the harm occurred, may obtain appropriate relief, including the following:
 - 1. Injunctive relief, protective order, writ of mandamus or prohibition, or declaratory relief to prevent any violation of sub-subdivision e. of this subdivision.



2. Actual damages, including for psychological, emotional, or physical harm, reasonable attorney fees, and costs.
- j. The State Board of Education shall monitor middle and high schools for compliance with sub-subdivision e. of this subdivision. If the Board finds a school in violation, it shall report the identity of the school to the Joint Legislative Education Oversight Committee."

SECTION 1.(b) G.S. 115C-218.75 is amended by adding a new subsection to read:

"(m) Athletic Teams. – A charter school organizing athletic teams for middle or high school students to participate in interscholastic or intramural athletic activities shall do so in accordance with G.S. 115C-12(23)."

SECTION 1.(c) G.S. 115C-238.66 is amended by adding a new subdivision to read:

"(21) Athletic teams. – A regional school organizing athletic teams for middle or high school students to participate in interscholastic or intramural athletic activities shall do so in accordance with G.S. 115C-12(23)."

SECTION 1.(d) G.S. 116-239.8(b) is amended by adding a new subdivision to read:

"(23) Athletic teams. – A laboratory school organizing athletic teams for middle or high school students to participate in interscholastic or intramural athletic activities shall do so in accordance with G.S. 115C-12(23)."

SECTION 1.(e) Article 39 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-548.1. Athletic teams.

(a) Any private church school or school of religious charter that is a member of an organization that administers interscholastic athletic activities pursuant to Article 29E of this Chapter shall comply with G.S. 115C-12(23).

(b) Any athletic team organized by a private church school or school of religious charter at the middle or high school level that is not covered by subsection (a) of this section shall comply with G.S. 115C-12(23) if the team is playing a team from any school required to follow G.S. 115C-12(23)."

SECTION 1.(f) Article 39 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-556.1. Athletic teams.

(a) Any qualified nonpublic school that is a member of an organization that administers interscholastic athletic activities pursuant to Article 29E of this Chapter shall comply with G.S. 115C-12(23).

(b) Any athletic team organized by a qualified nonpublic school at the middle or high school level that is not covered by subsection (a) of this section shall comply with G.S. 115C-12(23) if the team is playing a team from any school required to follow G.S. 115C-12(23)."

PART II. ATHLETIC ELIGIBILITY IN HIGHER EDUCATION

SECTION 2.(a) G.S. 115D-5 is amended by adding a new subsection to read:

"(z) The State Board of Community Colleges shall monitor community colleges for compliance with Article 38 of Chapter 116 of the General Statutes. If the State Board determines that a community college is in violation of Article 38, it shall report the identity of the community college to the Joint Legislative Education Oversight Committee."

SECTION 2.(b) Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 38.

"Biological Sex-Specific Athletic Teams.

"§ 116-400. Definitions.

The following definitions apply in this Article:

- (1) Institution of higher education. – A constituent institution of The University of North Carolina, a community college under the jurisdiction of the State Board of Community Colleges, or a private college or university located in North Carolina.
- (2) Intercollegiate athletic program. – A sport program played at the collegiate level for which eligibility requirements for participation by a student are established by a national association for the promotion or regulation of intercollegiate athletics, including the National Collegiate Athletic Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), and the National Junior College Athletic Association (NJCAA).

"§ 116-401. Designation of athletic teams.

(a) All teams that are part of an intercollegiate athletic program of an institution of higher education shall comply with the following:

- (1) Each team shall be expressly designated by the biological sex of the team participants as one of the following:
 - a. Males, men, or boys.
 - b. Females, women, or girls.
 - c. Coed or mixed.
- (2) Athletic teams designated for females, women, or girls shall not be open to students of the male sex.

(b) For the purposes of this section, sex shall be recognized based solely on a person's reproductive biology and genetics at birth.

"§ 116-402. Cause of action; remedies.

(a) A student who is deprived of an athletic opportunity or suffers or is likely to suffer from any direct or indirect harm as a result of a violation of this Article may assert that violation as a cause of action for remedies provided for in subsection (d) of this section.

(b) A student who is subjected to retaliation or other adverse action by an institution of higher education, athletic association, or other organization as a result of reporting a violation of this Article to an employee or representative of the institution of higher education, athletic association, or to any local, State, or federal agency with oversight of the institution shall have a cause of action for remedies provided for in subsection (d) of this section.

(c) Any institution of higher education or its representatives or employees who suffer any direct or indirect harm for complying with the requirements of this Article shall have a cause of action for remedies provided for in subsection (d) of this section.

(d) Any person who brings a cause of action pursuant to this Article may obtain appropriate relief, including the following:

- (1) Injunctive relief, protective order, writ of mandamus or prohibition, or declaratory relief to prevent any violation of this Article.
- (2) Actual damages, including for psychological, emotional, or physical harm, reasonable attorney fees, and costs.

(e) All civil actions under this Article must be initiated within two years from the date that the harm occurred.

"§ 116-403. Monitoring compliance with this Article.

The Board of Governors shall monitor constituent institutions for compliance with this Article. If the Board of Governors determines that a constituent institution is in violation of this Article, it shall report the identity of the constituent institution to the Joint Legislative Education Oversight Committee."

PART III. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 3.(a) If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect

without the invalid provisions or application and, to this end, the provisions of this act are severable.

SECTION 3.(b) This act is effective when it becomes law and applies beginning with the 2023-2024 school year.

In the General Assembly read three times and ratified this the 26th day of June, 2023.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Donna McDowell White
Presiding Officer of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 6:29 p.m. this 16th day of August, 2023.

s/ Ms. Sarah Holland
Senate Principal Clerk



**NORTH CAROLINA
COALITION FOR
CHARTER SCHOOLS**

MODEL POLICIES

**NORTH CAROLINA
PARENTS’ BILL OF RIGHTS**

On August 16, 2023, the North Carolina General Assembly ratified N.C. Sess. Law. 2023-106, commonly known as the “Parents’ Bill of Rights.” The law enumerates rights of parents to participate in and direct the education of their children. It also requires public school units, including charter schools, to adopt numerous policies implementing its provisions.

The following model policies have been prepared and made available to members of the North Carolina Coalition for Charter Schools. As with any model or form, schools will need to adapt these policies to reflect their individual practices and procedures. Adapting these policies often requires a school to synthesize various laws and regulations, including the requirements of state and federal laws not reflected in the legislation itself. Schools are therefore encouraged to seek legal counsel regarding the application and implementation of these policies in their individual schools.

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PARENTAL RIGHTS

Parents' Bill of Rights

Pursuant to State and federal law, a parent has the right to the following:

- (1) To direct the education and care of his or her child
- (2) To direct the upbringing and moral or religious training of his or her child
- (3) To enroll his or her child in a public or nonpublic school and any school choice option available to the parent for which the child is otherwise eligible
- (4) To access and review all education records relating to his or her child, as authorized by the Federal Educational Right and Privacy Act ("FERPA"), 20 U.S.C. § 1232g
- (5) To make health care decisions for his or her child, unless otherwise provided by law
- (6) To access and review all medical records of his or her child, as authorized by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), P.L. 104-191, as amended, except as follows:
 - If an authorized investigator requests that information not be release to a parent because the parent is subject to an investigation of either (i) a crime committed against the child or (ii) an abuse and neglect complaint; or
 - When otherwise prohibited by law
- (7) To prohibit the creation sharing, or storage of a biometric scan of his or her child without the parent's prior written consent, except as authorized pursuant to a court order or otherwise required by law
- (8) To prohibit the creation, sharing, or storage of his or her child's blood or DNA without the parent's prior written consent, unless otherwise authorized by law
- (9) To prohibit the creation by the State, or the school, of a video or voice recording of his or her child without the parent's prior written consent, unless such record is made in connection with:
 - A court proceeding
 - An investigation into alleged neglect or abuse of the child
 - A safety demonstration
 - An academic or extracurricular activity
 - Classroom instruction
 - A photo identification card

- Security or surveillance of buildings, grounds, or school transportation
- (10) To be promptly notified if the school, or any employee of the school, suspects that a criminal offense has been committed against his or her child, unless doing so would impede an investigation by law enforcement or a county welfare agency

Specific Rights Related to Child's Education

Pursuant to G.S. 115C-76.25, a parent or legal guardian's rights with regard to his or her child's education include the following:

- The right to consent or withhold consent for participating in reproductive health and safety educational programs, consistent with the requirements of G.S. 115C-81.30
- The right to seek a medical or religious exemption from immunization requirements consistent with the requirements of G.S. 130A-156 and G.S. 130A-157
- The right to review statewide standardized assessment results as part of the State report card
- The right to request an evaluation of their child for an academically or intellectually gifted program, or for identification as a child with a disability, as provided by State and federal law
- The right to inspect and purchase public school unit textbooks and other supplementary instructional materials, when available
- The right to access information relating to <<SCHOOL's>> policies for promotion or retention, including high school graduation requirements
- The right to receive student report cards on a regular basis that clearly depict and grade the student's academic performance in each class or course, the student's conduct, and the student's attendance
- The right to access information relating to the State public education system, State standards, report card requirements, attendance requirements, and textbook requirements
- The right to participate in any parent-teacher organizations
- The right to be informed of, and to opt-in to, any survey of protected information under G.S. 115C-76.65
- The right to opt into certain data collection for their child, as provided in Part 5 of Article 7B and Article 29 of Chapter 115C the North Carolina General Statutes
- The right to review all available records of materials their child has borrowed from a school library

Definitions

- As used in these policies, “parent” shall mean a person who has legal custody of a child, including a natural parent, adoptive parent, or legal guardian.

Miscellaneous Provisions

- Nothing in this policy authorizes a parent or guardian to engage in unlawful conduct, or to abuse or neglect a child.
- Nothing in this policy shall prohibit or otherwise limit a State official, law enforcement, or a court of competent jurisdiction from acting pursuant to legal authority granted under local, state, or federal law.
- An employee who encourages, coerces, or attempts to encourage or coerce a child to withhold information from his or her parent may be subject to disciplinary action.
- A copy of this policy shall be posted on the school’s website.

Revised: September 9, 2023

Ref.: G.S. 114A-10; G.S. 114A-15; G.S. 115C-76.25

[Note: Several items in the above list of rights, which are drawn directly from the statutes, are worth nothing:

- *G.S. 114A-10 (listed in Item 10, above) grants parents the right to prohibit video recordings being made of their child unless in certain circumstances. These exceptions are broad enough to include most common uses of recordings in schools, including security surveillance footage and use in class and extracurricular activities.*

Schools may consider adding a separate policy concerning the use of video and audio recordings that prohibits personnel from recording students without first obtaining parent consent unless the recording meets one of the exceptions above.

- *G.S. 115C-76.25 grants parents the right to purchase textbooks “as provided in Article 8, Part 3, of Chapter 115C of the General Statutes,” which governs the selection and use of textbooks by LEAs. G.S. 115C-102, which is part of those statutes, requires LEAs to permit parents to purchase textbooks. Charter schools, however, are exempt from the statutes that govern LEAs purchase and use of textbooks pursuant to G.S. 115C-218.10. Accordingly, the language in this policy refers to the right to purchase textbooks “when available.”*

- *G.S. 115C-76.25 grants parents “The right to opt into certain data collection for their child, as provided in Part 5 of this Article and Article 29 of Chapter 115C the North Carolina General Statutes, which govern student records. These statutes, however, do not grant “opt-in” rights. Instead, two sections, G.S. 115C-402.5 and 115C-402.15, provide parents the right to “opt-out” from the disclosure of “Directory Information” as provided under FERPA. The reference to “opt-in” thus appears to be a misstatement. It is not clear whether this provision was meant to alter the right rules governing directory information. Accordingly, the model policy reflects the language of the Parents’ Bill of Rights and states “opt-in,” even though parents may only have “opt-out” rights with respect to such information.*

FERPA allows schools to publish directory information so long as the school provides notice to parents at the beginning of each school year that (i) directory information will be disclosed and (ii) parents may “opt-out” of the disclosure within a certain period of time. 34 CFR § 99.37(a). “Directory information” generally includes name, address, telephone numbers, date of birth, grade, dates of attendance, and participation in activities and sports.

Schools should continue to provide annual notice to parents regarding the disclosure of directory information and their right to opt-out if they choose.]

PARENT INVOLVEMENT

Purpose

<<SCHOOL>> believes that parental involvement and empowerment is fundamental to the successful education of all students. It is the responsibility of all teachers, administrators, and staff to (i) strengthen partnerships with parents and families and (ii) develop and implement a well-planned, comprehensive program to assist parents and families in effectively participating in their child's education.

To that end, <<SCHOOL>> has developed this and other policies to (i) inform parents of their legal rights and responsibilities with regards to their parent education; (ii) provide a parent's guide for student achievement on an annual basis; and (iii) effectively involve parents in the school and their child's education.

Ref. G.S. 115C-76.20

Parental Guide

Each year, the school shall distribute a written parental guide to student achievement that (i) includes, at minimum, the information required by the State Board of Education and (ii) is understandable to students and parents. The parental guide shall be discussed at the beginning of each school year in meetings with parents, students, and teachers.

Ref. G.S. 115C-76.30

Links to Community Services

The school shall provide on its website links to community services available to students and their families.

Ref. G.S. 115C-76.25(a)(1)

Parent Surveys / Parent Advisory Councils

Each year, the school shall survey and solicit input from parents regarding development, implementation, and evaluation of parent involvement programs. The results of this survey shall be shared with the board of directors.

The principal may form one or more parent advisory councils to assist the school in fostering cooperation among parents, teachers, administration, and staff. The principal shall inform parents about opportunities to participate in such parent advisory councils, as well as other volunteer programs and other activities, as they become available.

Ref. G.S. 115C-76.35(a)(2) and (3)

[Note: G.S. 115C-76.35(a)(2) requires schools to develop policies to establish opportunities for parental involvement in the development, implementation, evaluation, of parent involvement programs. The statute, however, spell out any particular process for doing so. This model policy suggests an annual survey, but the school may meet this requirement in other ways.

Similarly, G.S. 115C-76.35(a)(3) requires schools to develop policies establishing opportunities for parents to participate on school advisory councils, as well as volunteer and other activities. Once again, the statute allows room for schools to adapt their policies to their individual practices. This model policy merely authorizes the principal to form such councils, leaving the formation scope, and duration of those councils to his or her discretion.]

Information Regarding School Assignments and Progress

At the beginning of each year, the principal and teachers shall communicate to parents how textbooks are used to implement the curricular objectives in their child's classes. Teachers shall also provide a syllabus or other information explaining the major topics to be covered over the course of the class and identifying the textbooks and primary supplementary materials that will be used in the class. Teachers shall periodically update parents regarding changes in the curriculum and additional materials used in the class.

Parents may access information regarding their child's assignments, including homework assignments, and their child's attendance and progress through <<INSERT NAME OF PLATFORM>>.

[Note: This policy may be adapted to match the school's chosen method of communicating class assignments, such as PowerSchool, weekly folders, etc. No specific medium of communication is required.]

Ref. G.S. 115C-76.35(b)(1), (2), and (3)

Information Regarding Clubs and Activities

At the beginning of each year, the school shall provide information to parents regarding clubs, as well as curricular and extracurricular activities available to children at the school, including the purpose and nature of such clubs and activities. Information regarding clubs and extracurricular activities will be communicated to parents through the school's website or its newsletter.

Ref. G.S. 115C-76.35(b)(6)

[Note: This policy may be adapted to require such information to be provided on the school's website or other methods of communication, such as newsletters, weekly folders, or email. No specific medium of communication is required.]

Rev. September 9, 2023

PARENT INFORMATION REQUESTS

A parent may request any information any information that the parent has a right to access under Article 7B, Part 1, of Chapter 115C of the North Carolina General Statutes, including the information set out in the school's policies governing Parent Rights, Parent Involvement, Parent Review of Instructional Materials, and Notifications Regarding Student Health. Parents requesting information under this section must submit their request in writing to the principal or his or her designee.

Process for Responding to Requests

If a parent submits such a written request for information pursuant to this policy:

- (1) Within 10 business days of receiving the request, the principal shall either (i) provide the requested information to the parent or (ii) provide a notice that an extension of no more than 20 business days is necessary to respond to the request due to either its volume or complexity
- (2) If the principal fails to respond to the request or provide the information within the timeframes set forth above, the parent may contact the Chair of the school's Board of Directors to request such information. In such case the Chair shall ensure that a response is provided to the parent within 10 business days.
- (3) If the Chair of the board denies the request or does not respond to the request for information within 10 business days, the parent may appeal the denial or lack of response to the Board of Directors. The parent must submit such an appeal within 20 business days of the date the request was submitted to the Chair.
- (4) If an information request is appealed to the Board of Directors within the time limit set forth in step 3, above, the Board shall place the parent's appeal on its agenda for the next board meeting. Pursuant to G.S. 115C-76.40, the Board's decision under this policy is final and is not subject to judicial review.

Publication

A copy of this policy shall be posted on the school's website.

Rev. September 9, 2023

Ref. G.S. 115C-76.40

PARENT REVIEW OF INSTRUCTIONAL MATERIALS

Inspection of Textbooks and Supplementary Materials

Parents have a right to inspect all textbooks and supplementary instructional materials used in their child's classroom. Parents who wish to inspect materials may submit their request in writing to the child's teacher. If the teacher does not respond or denies the request, the parent may forward the request to the principal using the procedures set out in policy for Parent Information Requests.

Objections to Textbooks and Supplementary Materials

If a parent objects to textbooks or supplementary instructional materials used in their child's classroom, they shall share that objection with their child's teacher, who shall work to accommodate the objection to the extent practicable. A parent who is not satisfied with the teacher's response may then raise the objection with the principal using the same procedures set out in the school's policy for Resolution of Parent Concerns.

Publication

A copy of this policy shall be made available at the school site and on the school's website.

Rev. September 9, 2023
Ref. G.S. 115C-76.40

RESOLUTION OF PARENT CONCERNS

This policy governs the resolution of parent concerns regarding the school's compliance with the requirements of Article 7B, Part 1, of Chapter 115C of the North Carolina General Statutes, or the school's policies governing Parent Rights, Parent Involvement, Parent Review of Inspection Materials, or Notifications Regarding Student Health. This policy does not govern the resolution of other parental concerns.

Parents are encouraged to communicate and seek to cooperatively resolve any concerns regarding their student's education with their student's individual classroom teachers before seeking to use the procedures set forth in this policy. This often serves as the quickest and most efficient way to address a parent's concerns.

Process for Responding to Parent Concerns

Parent concerns raised shall be submitted in writing to the principal and shall be resolved using the following procedure:

- (1) Within 10 business days of receiving the request, the principal shall either (i) provide a response to the parent's concern or (ii) inform the parent that additional time, up to 20 days, is required to respond to the parent's concern.
- (2) If the principal fails to respond within the timeframes set forth above, the parent may raise the concern in writing with the Chair of the school's Board of Directors. In such case the Chair shall ensure that a response is provided to the parent within 10 business days.
- (3) If Chair does not resolve the parent's concern, the parent may submit an appeal to the school's Board of Directors. The parent must submit such an appeal within 20 business days of the date the concern was submitted to the Chair.
- (4) If a concern is appealed to the Board of Directors within the time limit set forth in step 3, above, the Board shall place the parent's appeal on its agenda for the next board meeting.

Notice to Board of Directors

The principal shall inform the board of directors of any concerns submitted by a parent in this section.

Applicable Law

Nothing herein shall prevent or limit a parent's ability to utilize the remedies set forth in G.S. 115C-76.60.

Rev. September 9, 2023
Ref. G.S. 115C-76.60

[Note: G.S. 115C-76.60 provides that if a parent's concerns are not resolved within 30 days that the parent may either (i) submit a complaint to the State Board of Education, who will appoint a hearing officer to recommend a solution to the State Board or (ii) file a lawsuit seeking in State court seeking a declaratory judgment, as well as attorneys' fees if the parent prevails. Accordingly, a school should work to resolve any parent concerns raised under this section within 30 days, notwithstanding the timelines set forth in this policy.]

STUDENT SURVEYS

Protected Information

The following shall constitute “Protected Information” for the purpose of this policy:

- Political affiliations or beliefs of the student or the student's parent
- Mental or psychological problems of the student or the student's family
- Sex behavior or attitudes.
- Illegal, antisocial, self-incriminating, or demeaning behavior.
- Critical appraisals of other individuals with whom respondents have close family relationships
- Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers
- Religious practices, affiliations, or beliefs of the student or student's parent
- Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program

Collection of Protected Information

Parents shall be notified before any survey or evaluation collecting or revealing Protected Information is conducted. The notice shall include the full text of the survey or evaluation.

No student shall be permitted to participate in a survey or evaluation collecting or revealing Protected Information unless the child’s parent provides prior written consent.

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Ref. G.S. 115C-76.65

NOTIFICATIONS REGARDING STUDENT HEALTH

Annual Notice of Health Care Services

The school shall notify parents at the beginning of each school year of each health care service offered at the school, if any, and the means for the parent to consent to such service.

Well-Being Questionnaires and Health Screenings

No well-being questionnaire or health screening shall be administered to a student in grades kindergarten through third grade without consent from the child's parent or legal guardian.

Prior to the administration to students in kindergarten through third grade, the school shall provide a copy of any student well-being questionnaire or health screening form. The notice shall include the method for the parent to consent to the use of the questionnaire or form for his or her child.

Changes in Services

The school shall notify parents of any changes in services related their child's mental, emotional, or physical health or well-being, or a change in the school's ability to provide a safe and supportive learning environment for the child. Such notice shall be provided prior to, or at least at the same time as, the change is made.

Parental Involvement

Teachers and staff shall encourage children to discuss issues related to their well-being with their parents, and, when appropriate, shall facilitate discussions of such issues with a child's parents.

No teacher or employee of the school shall prohibit or encourage a child to withhold information about the child's mental, emotional, or physical health or well-being, or changes in services related to the child's health, or well-being, from the child's parent.

Nothing in this policy shall prohibit parents from accessing their child's health or education records, unless school personnel, in consultation with the principal, reasonably believe that such disclosure would result in the child being subject to abuse or neglect.

Name Changes / Changes in Pronouns

The school shall notify a child's parent before changing the name or pronouns used for a child, either by the school's personnel or in the student's records. This policy does not apply to common nicknames or shortened versions of a child's first or middle name. (Such as using "Rob" for "Robert," or "Jane" for a child named "Sarah Jane").

Age-Appropriate Instruction for Children in Grades K-4

Instruction on gender identity, sexual activity, or sexuality shall not be included in the curriculum provided in kindergarten through fourth grade, regardless of whether the information is provided by school personnel or third parties.

This policy does not prohibit teachers or school personnel from responding to student-initiated questions.

Consent for Instruction Regarding Reproductive Health

The school shall notify parents before providing instruction regarding reproductive health, including instruction regarding health and safety provided to students in seventh grade. Parents may opt-out of this instruction by informing their child’s classroom teacher.

Rev. September 9, 2023

Ref. G.S. 115C-76.45