

DISCRIMINATION COMPLAINT

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

Information Required by OCR Discrimination Complaint Form

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2. Names of persons discriminated against:

a)



- f) NAACP of Bucks County
- g) The PairUP Society

3. Agency that engaged in the alleged discrimination:

Pennridge School District
1200 N. 5th Street
Perkasie, PA 18944

4. The basis of this complaint is discrimination based on race that violates Title VI of the Civil Rights Act of 1964, and discrimination based on sex that violates Title IX of the Educational Amendments Act of 1972. The discrimination includes Pennridge School District's chronic failure to take reasonable and necessary measures to address persistent and severe bullying and harassment of LGBTQ+ students and students of color, which has resulted in a hostile environment for these students. The District further creates and exacerbates this hostile environment by using discriminatory discipline policies against Black students, adopting policies that limit

expression, eliminating access to diverse and culturally responsive learning materials, and adopting discriminatory bathroom and sports policies.

5. A description of the discriminatory acts is below.
6. Description of documents or written information: various documents including written correspondence of policies are described in the below narrative and attached as exhibits.
7. The most recent date of discrimination: Discrimination is ongoing in the form of a hostile environment against students of color and LGBTQ+ students. Moreover, discriminatory actions by the Penridge School Board continue to this day, with the most recent sports policy passed on October 24, 2023, and the issuance of discriminatory discipline as recently as November 2023.
8. Complainants are requesting a waiver of the 180-day time frame for filing this complaint for the violations that are ongoing violations that began more than 180 days ago.
9. Many of the specific instances of harassment and bullying identified in this complaint were raised by students, parents, and staff with the Penridge School District administration.
10. This complaint is simultaneously being submitted to USDOJ and OCR. One complainant, [REDACTED] previously filed the complaint with OCR *pro se*. This complaint amends her previously filed complaint and provides new allegations on behalf of new complainants.

11. Option to Participate in OCR's Early Mediation Process: N/A.

12. Remedy sought: The students, teachers, and families who are submitting this complaint would like USDOJ and/or OCR to investigate the hostile environment at Pennridge School District, assert jurisdiction, and order PSD to take the measures to remedy the hostile environment for students of color and LGBTQ+ students. This includes but is not limited to: (1) mandate that all School Board members and District staff receive racial bias and cultural competency training approved by OCR; (2) create a District-wide DEI position, headed by a non-school board member; (3) require the School Board to make available diverse, culturally responsive learning materials; (4) establish a stakeholder equity team comprised of teachers, administrators, counselors, District administrators, special education staff or administrators, members of community organizations, and students and parents/guardians, with the mission of examining the root cause of racial and LGBTQ+ based discrimination students face; (5) create new guidelines and revise the Code of Conduct to expressly prohibit the use of racial slurs and other racially discriminatory behavior and make a public process for responding to complaints that includes appropriate discipline utilizing restorative justice practices for students; and (6) eliminate the discriminatory use of summary citations.

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**NAACP Bucks County et al. Complaint Against Pennridge School District
Pursuant to Title IX of the Education Amendments of 1972 and Title VI of
the Civil Rights Act of 1964.**

*This Complaint is being submitted simultaneously to the U.S. Department of
Education, Office of Civil Rights and the United States Department of Justice,
Civil Rights Division.*

I. INTRODUCTION

The Pennridge School District’s (“PSD’s” or “District’s”) self-proclaimed mission states, in part, that it seeks to educate students in a safe and nurturing environment.¹ Unfortunately, the District has repeatedly violated its own mission statement. The District has subjected students of color, LGBTQ+ students, and their families to a hostile environment rife with race- and sex-based harassment in violation of Title VI and Title IX.

For years, teachers, students of color, and LGBTQ+ students have reported race- and sex-based harassment, including students routinely using the N-word² toward Black students and students threatening violence against LGBTQ+ students. But District officials have refused to remedy the systemic and pervasive forms of race- and sex-based harassment extant throughout the District. Instead, the District has created and exacerbated a hostile environment by eliminating Diversity Equity and

¹ PENNRIDGE SCHOOL DISTRICT, *About Pennridge*, <https://perma.cc/3JXC-9J6X> (last visited Oct. 20, 2023).

² The “N-word” refers to the racial slur “nigger.” To reduce the circulation of the term, we use the term “N-word” unless directly quoting someone.

Inclusion initiatives, banning diverse learning materials, promoting racially disparate discipline outcomes, and adopting discriminatory bathroom and sports policies. These policies and practices prevent students of color and LGBTQ+ students from accessing their education on equal terms with their peers.

Complainants submit this Complaint with the U.S. Department of Education, Office of Civil Rights (“OCR”) and the United States Department of Justice, Civil Rights Division, seeking relief under Title VI of the Civil Rights Act of 1964 (Title VI) and Title IX of the Education Amendments of 1972 (Title IX), 42 U.S.C. § 2000d et seq. 20 U.S.C. § 1681 et seq., for the District’s ongoing failure to remedy the hostile environment in their schools.

II. PARTIES

A. Complainants

Organizational complainant, the NAACP of Bucks County, is one of the 2,200 chapters of the National Association for the Advancement of Colored People. Members of the NAACP of Bucks County are enrolled in the Pennridge School District and are experiencing a hostile environment. NAACP of Bucks County has condemned proposed policies from the Pennridge School Board. Such policies govern the “advocacy activities” of teachers, the removal of books previously available in school libraries, and dissemination of non-school related material from students.³

³ James McGinnis, *Pennridge board defends proposed speech policy against ire of parents, Bucks NAACP, others*, BUCKS COUNTY COURIER TIMES, <https://perma.cc/39QT-T6AS> (last visited Nov. 7, 2023).

Organizational complainant PairUP Society (“PairUP”) was founded by parents, guardians, and community members in Perkasio, Pennsylvania to celebrate diversity as a strength and provide support for underrepresented students. PairUP seeks to build equitable and inclusive school communities that nurture a sense of belonging, psychological safety, and wellness. Members of PairUP include the parents of children who have experienced bullying, harassment, race- and sex-based discrimination, and harms from the removal of diverse learning materials that serve as a buffer against discrimination by providing representation of underrepresented communities and increasing understanding. PairUP members have reported students referring to Asian American students using derogatory language such as “slanty” eyes, and other racist and derogatory terms. As a result of the District’s failure to address race- and sex-based harassment, PairUP members have devoted extensive time and resources to addressing the District’s hostile environment and advocating for equal rights for all children.

Individual complainant [REDACTED] is a Black student in the Pennridge School District. [REDACTED] has attended [REDACTED] through [REDACTED] grades in the Pennridge School District. [REDACTED] has experienced severe and pervasive race-based harassment, which has negatively impacted her right to obtain an education free of discrimination and harassment. [REDACTED] parents have struggled with whether they should remove her from the District because of the race-based harassment she has consistently experienced.

Individual complainant [REDACTED] is a Black student in the Pennridge School District. [REDACTED] has experienced severe and pervasive race-based harassment by fellow

students. ■■■ has also experienced discriminatory disciplinary treatment by the District, which has negatively impacted his ability to learn and participate in school.

Individual complainant ■■■ is a Black and Latinx student in the Pennridge School District. ■■■ has experienced severe and pervasive race-based harassment by fellow students. ■■■ has also experienced discriminatory disciplinary treatment under District policies, which have hindered his ability to engage in educational opportunities.

Individual complainant ■■■ is a queer student that graduated from the Pennridge School District in the spring of 2023. ■■■ was subjected to severe and pervasive sex-based harassment and as a result entered online learning in part to avoid the hostile environment.

Individual complainant Teacher ■■■ is a transgender teacher who experienced isolation and sex-based harassment due to Pennridge School District policies. His experiences resulted in severe emotional distress and psychological anguish, leading to his resignation.

Counsel for complainants are the Advocacy for Racial & Civil Justice Clinic and the Education Law Center-PA (“ELC”). The Advocacy for Racial & Civil Justice Clinic is a legal clinic that uses strategic legal advocacy to further racial justice. ELC is a nonprofit, legal advocacy organization dedicated to ensuring that all children in

Pennsylvania have access to a quality public education by focusing on the most underserved students.⁴

B. Respondents

Pennridge School District (“PSD” or “the District”) is the local educational agency responsible for the administration and operation of Pennridge schools. Pennridge schools are located in Bucks County, Pennsylvania, and serves eight municipalities. It is one of the largest districts in Pennsylvania, educating nearly 7,000 students in grades K-12. Pennridge school officials are responsible for implementing discipline, school safety, and security policies for all schools under its jurisdiction. PSD is a recipient of federal funding from the U.S. Department of Education, falling within the definition of 20 U.S.C. § 8801(19).

The Pennridge School Board (“the Board”) is responsible for the instruction of students and the supervision of students and staff in PSD. The Pennridge School Board has nine members:⁵

Mr. David Reiss, President;

Mrs. Megan Banis-Clemens;

⁴ ELC is a statewide nonprofit and legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ+ students, and children experiencing homelessness.

⁵ Mr. David Reiss, Mrs. Megan Banis-Clemens, Mrs. Joan Cullen, and Mr. Jonathan Russell lost their re-election campaigns on November 7, 2023. Their terms will end in January. Joe Ferry, *Democrats win Pennridge School Board race*, BUCKS COUNTY HERALD (Nov. 8, 2023) <https://perma.cc/E6JX-XCYL>.

Mrs. Christine Batycki;

Mrs. Jordan Blomgren;

Mrs. Ricki Chaikin;

Mr. Robert Cormack;

Mrs. Joan Cullen;⁶

Mr. Jonathan Russell;

and

Mr. Ronald Wurz.

On September 13, 2023, the Southern Poverty Law Center reported that five members of the Board are associated with Moms for Liberty.⁷ Southern Poverty Law

⁶ In late July of 2021, an administrator for the School District sent an email to all teachers instructing them to not “wade into” discussions with students about the January 6, 2021, insurrection. The administrator acknowledged the polarized climate surrounding the insurrection but insisted that “as historians we must wait until there is some distance from the event for us to accurately interpret it,” and expressed that most teachers were unprepared to teach on the topic. Emily Rizzo and Katie Meyer, *Don’t discuss the Jan. 6 insurrection with students, a Bucks school district tells teachers*, WHYY (Jan. 5, 2022) <https://perma.cc/YWE4-LLJY>. Bucks County, where Pennridge is located, was the single most-represented county among the 64 insurrectionists arrested following January 6. Kim Strong, *Where are they now? Pennsylvania’s most notorious insurrectionists*, YORK DAILY RECORD (Jan. 5, 2022) <https://perma.cc/7WVB-5CKJ>. School Board member Joan Cullen was at the rally on January 6 and neither Cullen nor the District answered questions as to whether the School Board influenced the decision to avoid discussing the insurrection with students. Emily Rizzo and Katie Meyer, *Don’t discuss the Jan. 6 insurrection with students, a Bucks school district tells teachers*, WHYY (Jan. 5, 2022) <https://perma.cc/7727-G4ZR>.

⁷ See Maya Henson Carey, *When Moms for Liberty ‘Flips’ a School Board*, SOUTHERN POVERTY LAW CENTER (last visited Oct. 20, 2023), <https://perma.cc/BD42-KYZG> (“Board member Jonathan Russell was endorsed by Moms for Liberty during his campaign, and current board members Ricki Chaikin, Joan Cullen, Jordan Blomgren and Christine Batycki are among the more than 1,000 members of the Bucks County Moms for Liberty private Facebook group.”) These numbers do not reflect the current composition of the board following the election on November 7, 2023.

Center has categorized Moms for Liberty as an anti-government extremist group focused on anti-student inclusion efforts.⁸

The PSD Superintendent is Mr. Angelo Berrios, who was appointed in August of 2023.⁹ Prior to Mr. Berrios' appointment, Dr. David Bolton served as the PSD Superintendent until June of 2023.¹⁰ The Superintendent is responsible for implementing and overseeing PSD policies.

III. BACKGROUND

A. Racial Disparities in Pennridge

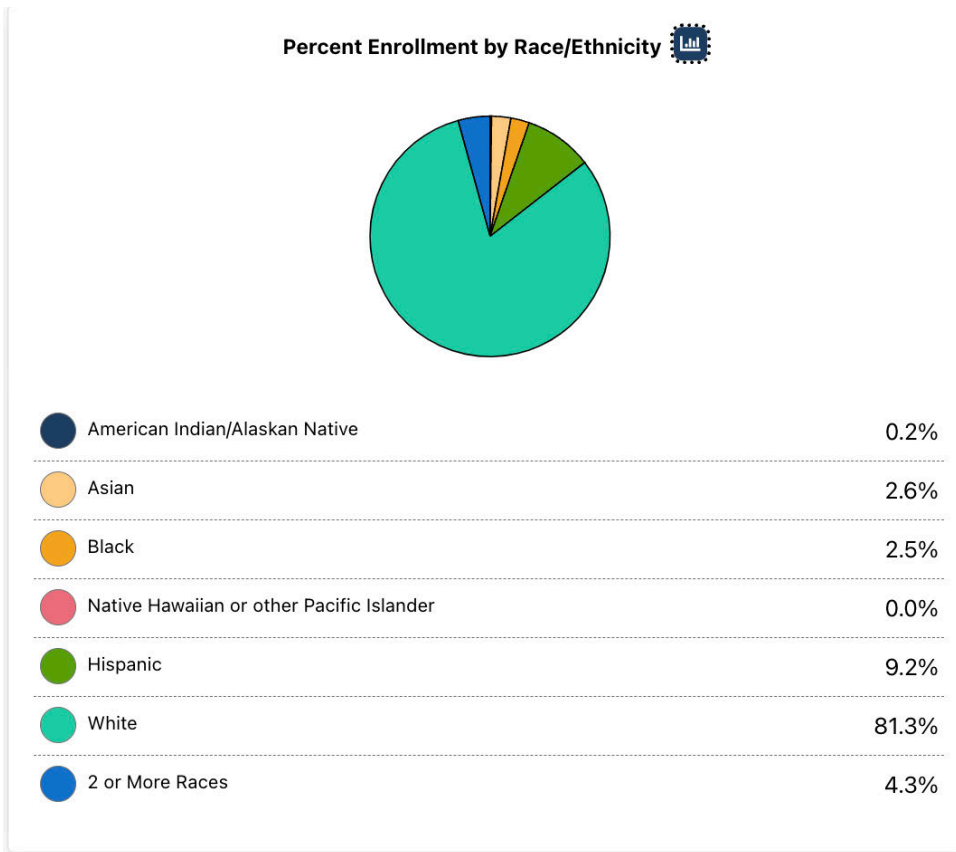
According to data from the Future Ready Pennsylvania Index, white students made up 81 percent of PSD's students, Latinx students account for about nine percent, Asian students account for 2.6 percent, and Black students account for two and a half percent.¹¹

⁸ Southern Poverty Law Center, *Moms for Liberty*, <https://perma.cc/XN3Z-DVEZ> (last visited Nov. 7, 2023).

⁹ Joe Ferry, *Amidst rancor, Pennridge School District names new superintendent*, BUCKS COUNTY HERALD (Aug. 30, 2023, 9:40 AM), <https://perma.cc/96YM-ZVBQ>.

¹⁰ Dr. Bolton was involved in and supervised DEI actions from 2020–2023 but was sidelined and ultimately replaced by the board with Mr. Berrios. Dr. Bolton retired on October 31, 2023. *Id.*; see also James McGinnis, *Pennridge agrees to pay, benefits for superintendent who announced resignation in June*, YAHOO SPORTS (July 12, 2023), <https://sports.yahoo.com/pennridge-agrees-pay-benefits-superintendent-120047198.html> (explaining that Dr. Bolton signed a severance agreement with the District as part of his retirement, which prevents him “from filing any future complaints, charges, grievances or unfair labor practices against Pennridge.”).

¹¹ FUTURE READY PA INDEX, *Pennridge School District*, District Fast Facts, <https://perma.cc/AX5P-UY2J> (last visited Oct. 20, 2023).



Source: Future Ready PA Index

Based on the 2017 report from the U.S. Department of Education’s Civil Rights Data Collection (“CRDC”) initiative,¹² Black, Latinx, and Asian students at Pennridge face discipline that is more harsh and more frequent than their white peers.¹³ Black student are 3.15 times more likely to receive at least one out-of-school

¹² See U.S. DEPT OF EDUC. OFF. OF CIV. RTS., CIVIL RIGHTS DATA COLLECTION, Educational Equity Report, <https://perma.cc/P4FU-DYPZ> (last visited Oct. 20, 2023) (providing publicly available data but stopping after 2017; this data thus relies on 2017 data).

¹³ U.S. DEPT OF EDUC. OFF. OF CIV. RTS., CIVIL RIGHTS DATA COLLECTION, Educational Equity Report, <https://perma.cc/2MTY-J7XP> (last visited Oct. 20, 2023).

suspension compared to their white peers.¹⁴ Asian students are 1.33 times as likely to receive at least one out-of-school suspension than their white peers.¹⁵ And Latinx students are .59 times more likely to receive at least one out-of-school suspension than their white peers.¹⁶

		OSS ratio (X more likely to receive OSS than white)						
District ↑	ID	TOT	AME	ASI	HI P...	BLA	HIS	TWO
Pennridge SD	4218750	0.39%	0.00	1.33	0.00	3.15	0.59	0.00

In addition to disparities in student discipline, stark disparities also exist regarding educational opportunities for students of color attending Pennridge schools. Black and Latinx students in PSD are underrepresented in Advanced Placement, International Baccalaureate, and other advanced courses.¹⁷ White students in the District are 4.5 times more likely than their Black peers to be enrolled in at least one Advanced Placement class.¹⁸ Black students account for just one percent of Gifted and Talented enrollment Districtwide, and Latinx students account

¹⁴ U.S. DEP’T OF EDUC. OFF. OF CIV. RTS., CIVIL RIGHTS DATA COLLECTION, Outcome Rate Calculator, “2017–2018 Civil Rights Data Collection Pennridge School District.”

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ U.S. DEP’T OF EDUC. OFF. OF CIV. RTS., CIVIL RIGHTS DATA COLLECTION, Educational Equity Report, <https://perma.cc/H22Z-9EFJ> (last visited Oct. 20, 2023).

¹⁸ PROPUBLICA, Miseducation Report, Pennridge High School, <https://perma.cc/PF2H-53ZP> (last visited Oct. 20, 2023). This is ProPublica’s most recent report, but it relies on OCR CDRC’s 2015–2016 report.

for 1.6 percent.¹⁹ Furthermore, Black and Latinx students in the District are disproportionately retained, with Black students making up 4.3 percent of retained students and Latinx students accounting for 13 percent.²⁰

IV. INDIVIDUAL COMPLAINANTS' ALLEGATIONS OF HARASSMENT

A. Student [REDACTED]

[REDACTED] is a Black student currently enrolled in [REDACTED] in the Penridge School District. [REDACTED] parents enrolled her in PSD schools at the beginning of the 2018–2019 school year when she began [REDACTED]. [REDACTED] has experienced race-based harassment every year that she has attended PSD schools in person. The only year that she did not experience racial harassment was the 2020–2021 school year when she attended school online due to the COVID-19 pandemic.²¹

[REDACTED] parents chose to enroll their children in PSD because of the District's resources and extracurricular opportunities. Despite [REDACTED] prolonged experiences of race-based harassment, [REDACTED] family has remained involved in the school community in the hopes of ensuring the School District provides an inclusive educational setting for all children, including [REDACTED] who is an active and enthusiastic student.

¹⁹ LEA Summary of Selected Facts; Pathways to College and Career Readiness.

Disparities in suspension rates between Black students and their white peers exacerbate the underrepresentation in Gifted and Talented enrollment, due to biased perceptions about behavior of students of color. Ciera Graham, *Why AP Classes Lack Diversity — and Why We Need to Change This*, BEST COLLEGES (Aug. 15, 2022) <https://perma.cc/7CS6-ARPX>.

²⁰ *Id.*

²¹ See Elizabeth Miller, *For Some Black Students, Remote Learning Has Offered A Chance To Thrive*, NPR (March 1, 2021) <https://perma.cc/5PR5-ZDTR> (explaining that remote learning gave Black students a reprieve from the psychological toll of constantly deflecting racial harassment and stereotyping).

In [REDACTED] grade, [REDACTED] experienced multiple incidents of racial harassment during the winter months. First, following a lesson about Frederick Douglass, another student called [REDACTED] a slave. [REDACTED] parents contacted the teacher. The teacher did not respond. The next week, students seated near [REDACTED] told the following joke: “What’s brown all over and loves bananas and doesn’t live in the jungle or rainforest?” Another student guessed a monkey and the person telling the joke said “No, [REDACTED]” When [REDACTED] reported this incident to her teacher, the teacher responded by saying, “We don’t say things like that,” but there was no further explanation, correction, or discipline to ensure the harassment did not occur again. Shortly after this incident, another student told [REDACTED] that all she would have to do was go outside and take her shirt off and she would look just like dirt. [REDACTED] parents requested to speak with the teacher. [REDACTED] parents received no response from the teacher. Unwilling to allow [REDACTED] to continue coming home from school feeling excluded and racially targeted, [REDACTED] parents raised these issues with the principal and superintendent. The principal and superintendent did not take any meaningful action.

In early March 2020, [REDACTED] parents requested a meeting with the School Board to discuss how the lack of diversity amongst the District’s teaching staff and the lack of education for students and staff on how to address ignorant and racist comments created an unwelcoming environment for Black children in the District. [REDACTED] parents also raised these issues at the Home and School Association (HSA) meeting and suggested forming a Diversity Equity and Inclusion (DEI) committee. The then Principal and Assistant Superintendent, Dr. Rybarczyk, told [REDACTED] mother that she

should begin a HSA DEI committee. However, they did not actually have authority over the HSA as it is not a school entity that they direct. The formation of the committee within the HSA was delayed, and the District failed to identify any other steps to address the harassment.

█ remained home for virtual learning during the 2020–2021 school year since it was optional due to COVID. █ parents stated that at-home virtual learning was “a breath of fresh air” because █ was able to avoid race-based harassment.

█ returned to in-person school the next year for █ grade. During this year, students in █ class began engaging in a play on words in which they would trick other students into saying two words together, resulting in the speaking student saying the N-word. █ overheard this play on words and informed her parents. █ parents contacted the school’s principal, informing him about the need for school-wide intervention and education following this incident. The principal claimed he did not have age-appropriate resources for a school-wide intervention. █ family spent days researching and compiling resources on race and racial sensitivity for elementary students that had been used in neighboring districts. █ parents sent the resources to the principal. The principal did not respond.

During the 2021–2022 school year, when █ was in the █ grade, she sat on the bus next to a white student who yelled the N-word out of the bus window at a passerby. When confronted with the fact that he may get in trouble for doing so, the child responded to █ and others that he wasn’t afraid of any potential consequence because his family used the N-word often.

█ parents notified the school of each of these incidents. They also worked to help the School District fulfill its duty to remedy race-based harassment and provide inclusive education for all children in the District. Unfortunately, their efforts have not succeeded as they have faced resistance or non-responses. █ parents worry that the District has become significantly less inclusive and more hostile towards students and families of color. Because the District has failed to address these incidents and has adopted policies that are openly hostile, the family is considering removing their children from the District's schools.

B. Student █

█ is a Black and Latinx student enrolled █ in the Penridge School District. █ frequently hears racial slurs at school. In fact, █ reported that he and other Black students are so accustomed to hearing the N-word at school that they have adapted to largely ignoring other students who use the slur, reacting only when the slur is specifically directed at them.

█ family has experienced racial harassment in the Penridge School District for generations. █ mother also attended Penridge High School and reports that she experienced frequent racial harassment as a student. On one occasion, another student wrote the N-word on her high school art class ceramic tile. While she had been excited to participate in the art project, she felt humiliated and embarrassed in front of her peers.

During the fall of the 2022–23 school year, █ reported a student to the school's principal for using a racial slur. The student received detention for using the

slur. Detention did not deter him or others from using the slur again. The school also did not provide counseling or other educational interventions to ensure students understood how the use of racial slurs like the N-word differs from other insults. This incident taught █████ that adults at school do not take racial harassment seriously since the consequence for using a racial slur was the equivalent consequence students received for minor misbehaviors like tardiness or dress code violations.

In September of the 2023–24 school year, a student sent a video of █████ a white student at PSD, to █████ Latin class Snapchat group.²² In the video, █████ says, █████ you're a nigger." █████ did not know or have any relationship with █████ When █████ asked █████ why he called him the N-word, █████ responded, "You're not going to do nothing, little boy," and then sent a picture of his arm. █████ viewed █████'s actions as a threat of violence.

The next morning, on September 21, 2023, █████ and one of his friends, █████ were in the school's Audion²³ before their classes started. They saw █████ sitting with a group of students. They heard one of the students in the group say the N-word. █████ and █████ called █████ over and asked why he called █████ the N-word. █████ responded, "Because I can." █████ and █████ grabbed each other. █████ called █████ the N-word again. █████ and █████ began fighting. █████ stepped in to try to defend █████

²² *Parent's Ultimate Guide to Snapchat*, COMMON SENSE MEDIA ("Snapchat is a popular messaging app that lets users exchange pictures and videos, called snaps, that are meant to disappear after they're viewed.")

<https://perma.cc/TV83-Y7Z7> (last visited Nov. 2, 2023).

²³ The Audion is a communal room with tables and chairs.

A teacher intervened and took the students to the principal. This was the same principal to whom ██████ had reported another student's use of a racial slur during the previous school year. The principal instructed ██████ to complete an incident report. On the incident report, ██████ wrote that ██████ called him the N-word. Despite being on notice that a racial slur was the source of the fight, the principal suspended ██████ and ██████ from school for five days, banned them from participating in extracurricular activities for 45 days, and banned them from entering the school Auditorium for ten days after their suspension ended and they were permitted to return to school. Each punishment was communicated verbally by the school, with no written notice or explanation. Despite the fact that ██████ has an Individualized Education Plan ("IEP"), the school did not conduct a manifestation determination prior to ██████ receiving exclusionary discipline.²⁴

For ██████ the fight also resulted in criminal sanctions. The school issued ██████ a summary citation, which is an adult criminal charge, for assault because of the fight. ██████ will now have to appear for a hearing in front of a magistrate and faces the potential of having an adult criminal record because of his involvement in a school fight, which could negatively affect him when he applies to colleges and jobs in the

²⁴ The Individuals with Disabilities Education Act (IDEA) requires a "manifestation determination" in connection with determining whether the conduct for which certain discipline is proposed is a manifestation of a student's disability. 34 C.F.R. § 300.530(e). If a school removes a student with a disability for more than 10 school days, the evaluation required before a significant change in placement. IDEA's requirements regarding a change in placement for a series of disciplinary removals that are 10 consecutive school days or less but total more than 10 school days in a school year. 34 C.F.R. § 300.536(a)(2).

future.²⁵ In contrast, ■■■, the white student who called ■■■ multiple racial slurs and instigated the fight, received a three-day suspension.

Since returning from suspension, ■■■ has become more withdrawn at school, mostly keeping his headphones on. ■■■ has been having a hard time finding motivation to work on schoolwork. Due to his ban from involvement in extracurricular activities, ■■■ has not been able to attend school football games or the school's Homecoming Dance, activities which he often participated in or planned on participating in prior to being banned from all extracurricular activities for 45 days. ■■■ has experienced severe emotional distress that manifested in his first anxiety attack. ■■■ began seeing a therapist.

Because of the race-based harassment they have experienced, ■■■ and his brother have asked their parents to enroll them in school in another school district. ■■■ mother wants to enroll them in another school district, but moving their family of six to a new home in another district presents a major financial and personal challenge for the family to navigate.

C. Student ■■■

■■■ is a Black and Latinx student ■■■ at Penridge High School. ■■■ and his siblings have experienced multiple incidents of racial harassment in middle and high school within the District. ■■■ and his family have reported their experiences of harassment to school administrators numerous times over the course

²⁵ See ACLU PENNSYLVANIA, *Students and the Justice System: Collateral Consequences*, END ZERO TOLERANCE, <https://perma.cc/L5ZJ-EHVZ> (last visited Oct. 20, 2023).

of several years. However, Pennridge administration has continually failed to adequately respond.

On February 4, 2022, [REDACTED] mother, [REDACTED] called the school's vice principal, informing them that another student at Pennridge Central Middle School was calling her children "niggers and yelling it in the halls." [REDACTED] and his siblings made teachers at Pennridge Central Middle School aware of this student's behavior, but the student continued to use slurs against them. The vice principal asked one of [REDACTED] siblings to write down what the other student said, but there was no other follow-up from school administration about the student and the slurs they were using against [REDACTED] and his siblings.

On February 15, 2022, [REDACTED] emailed the school's principal informing them that a student called her children the N-word and continued to do so even after her children reported the behavior to teachers. [REDACTED] wrote to the principal that school administrators were ignoring the voices of her children and other students of color regarding the ongoing racial harassment they were experiencing at school.

On March 1, 2022, after a lack of adequate response by the school, [REDACTED] went to the school to meet with the school's principal about the incidents. She followed up later that day by emailing the school's principal, recounting the multiple steps she took to notify the school of the use of derogatory slurs against her children, which included calling the vice principal and emailing the principal. The principal responded that the school would follow up with the students. As far as [REDACTED] is aware, the principal never followed up.

At the end of the 2021–2022 school year, the family moved to Ohio to escape the race-based harassment that [REDACTED] and his siblings experienced and the school’s hostility toward [REDACTED]. The family had a comparatively more positive experience with race relations in Ohio, and that time felt like a respite for the children. Unfortunately, [REDACTED] and his family had to move back to Penridge before the 2023–24 school year for financial reasons.

Since returning, [REDACTED] has heard students at Penridge High use the N-word “all the time.” Like other Black students at Penridge, [REDACTED] usually does not engage with those using the slur unless it is directed at him. However, in September of 2023, he intervened when [REDACTED] called his friend [REDACTED] the N-word in a Snapchat group video and then again in-person at school. On September 21, 2023, when [REDACTED] and [REDACTED] started to fight, [REDACTED] stepped in to defend [REDACTED] against the racist and hateful language. A teacher broke up the fight, and [REDACTED] went to his first period class. A school security guard then arrived at his first period class and took him to the in-school suspension room, where he sat until the principal called him to the office an hour later.

The principal instructed [REDACTED] to fill out a form explaining what happened. [REDACTED] wrote that [REDACTED] called his friend, [REDACTED] the N-word and said it again in the school’s Audion that morning. Initially, the principal told [REDACTED] that he would be suspended for three days. However, the next day, the principal called [REDACTED] and said that [REDACTED] would be suspended for ten days, banned from all school-sponsored extracurriculars for 45 days, charged with harassment and assault, and assigned a probation officer. [REDACTED] mother and grandmother felt that this punishment was extreme considering the

circumstances and emailed the principal and school administrators to request that they reduce the punishment. [REDACTED] family went to meet with the principal and during the meeting the District agreed to reduce [REDACTED] suspension to five days. No written documentation or due process hearing was provided at any point.²⁶

During this meeting, the school and house principals²⁷ said they wanted to sit down with [REDACTED] to discuss what happened during the fight. [REDACTED] mother asked why they had not talked to [REDACTED] before punishing him, and the principals said that they did not do so because “tensions were high” after the fight. During the meeting, [REDACTED] shared that a friend warned him that a group of white students were planning to physically attack him and [REDACTED] because of the altercation with [REDACTED]. The principals wrote down the students’ names but did not otherwise address the threat.

In November of 2023, [REDACTED] received notice that her son, [REDACTED] was charged with simple assault and harassment, as a result of his involvement in the altercation between [REDACTED] and [REDACTED]. According to the allegations, the Penridge Police Department’s investigation of the incident was advised by School Resource Officer (SRO) Joe Gallo. In the written allegations that [REDACTED] received in the mail, Penridge School District admits that SRO Gallo’s investigation determined that [REDACTED] use of

²⁶ Pursuant to 22 Pa. Code § 12.6 (b) (iii) and (iv), [REDACTED] parents should be notified immediately in writing of the suspension and when the suspension exceeds 3 school days, the student and parent must be given the opportunity for an informal hearing consistent with the requirements of 22 Pa. Code § 12.8(c) (relating to hearings) which includes the right of a student to question any witnesses present at the hearing and speak and produce witnesses on his own behalf. [REDACTED] family was never apprised of these rights under state law.

²⁷ Penridge High School categorizes each class year as a different “house,” and each grade-level principal as a “house principal.”

racial slurs provoked the altercation between [REDACTED] [REDACTED] and [REDACTED]. Nonetheless, [REDACTED] [REDACTED] and their families are unaware of any criminal charges being brought against [REDACTED]. Meanwhile, both [REDACTED] and [REDACTED] are facing criminal charges, including alleged harassment of [REDACTED] for their responses to [REDACTED] use of the N-word.

Despite the tensions that led to the altercation between [REDACTED] and [REDACTED], [REDACTED] feels deeply that conflicts should be resolved without violence, and he wishes that there was a process for the school to reliably respond and address racial harassment without leaving students to respond on their own. He feels remorse for his involvement in the altercation and experiences severe anxiety when he thinks about what happened and the criminal charges he is facing. He is disappointed that he will not be able to attend extracurricular activities, which he loved to do before being banned.

Since [REDACTED] has returned to school following his 5-day suspension, his experience has remained unpleasant and tainted by racial animus. When [REDACTED] asked why he and [REDACTED] were named from the Auditorium for ten days, the principal claimed that this was because he caught them looking at [REDACTED] in a “troublesome” way. [REDACTED] was told that he was punished for his “troublesome demeanor” as perceived by the principal. [REDACTED] feels that [REDACTED] continued punishment—especially in light of the District’s consistent failure to protect her children from race-based harassment—shows that the school perceives [REDACTED] as a criminal threat, and not a student deserving of nurturing and support. [REDACTED] fears that school administrators will continue to make an example out of [REDACTED] and other students of color in the District.

D. Student ■■■

■■■ is a queer/pansexual graduate of the Penridge School District who experienced various forms of sex-based discrimination while still enrolled in school. Homophobic comments are commonplace at Penridge. ■■■ reported hearing them every day. Bystanders, including teachers and other students, failed to intervene on multiple occasions. Students who use slurs or make homophobic comments do not face punishment.

On more than one occasion, ■■■ witnessed students dumping trash on queer students' heads as they tried using the bathroom. As a result, ■■■ felt increasingly nervous to use the restrooms at school. Furthermore, pervasive use of slurs often occurred in the lunchroom, leading ■■■ to avoid the lunchroom altogether, eating outside instead.

During the 2020–2021 school year, ■■■ overheard threatening comments towards the LGBTQ+ community in the hallway while she was making up a test. One student said that if his sister were a lesbian, he would “shoot her with a gun.” The surrounding students laughed at the remark. ■■■ reported what she overheard to a guidance counselor. The guidance counselor said she could not take any action unless she knew the names of the students. The school took no further action. ■■■ did not feel safe at school. She therefore enrolled in online learning for the 2021–22 school year, her junior year.

Ultimately, ■■■ was not able to fully access her education online and decided to come back to school for in-person learning for her senior year, the 2022–23 school

year. ■ did not feel like the school environment improved and felt less safe at school since the District adopted its “advocacy” policy,²⁸ which prohibits teachers and staff from displaying LGBTQ+ safe space items, and its new pronoun guidelines,²⁹ which require guidance counselors to inform parents of a student’s change of pronoun request.³⁰ ■ feels these policies exacerbated the already hostile environment, emboldening students’ conduct.

A group of students who were part of the ■ club at the school, including ■ met with Superintendent Bolton to discuss the possible negative implications of the pronoun policy, which required the notification and consent of a student’s parents before allowing a student to go by a different name or pronoun. When the students attempted to express that “outing” students to their parents could be unsafe, Superintendent Bolton told them, “If my child was mentally ill, I would want to know.” The group felt insulted and hurt by the superintendent’s comments that being transgender was a mental illness. Superintendent Bolton failed to take any further action after meeting with the students.

E. Teacher ■

■ is a transgender man who was employed as a music teacher in the District from the fall of 2017 until September of 2023. ■ worked as a substitute in the District for three months in the spring of 2017 before transitioning. After

²⁸ See *infra* section V. D. (discussing the District’s advocacy policy).

²⁹ See *infra* section V. J. (discussing the District’s pronoun policy).

³⁰ *Id.*

transitioning in the summer of 2017, he began working as a full-time teacher. He did not share his trans identity with students. ■■■ enjoyed his first three years in the District and felt he was able to be himself while maintaining a positive teaching environment for his students.

Starting in 2021, ■■■ began noticing school policies limiting his ability to exist in the school authentically. In the 2022–2023 school year, the District passed an “Advocacy Policy” that includes the following statement: “Because personal beliefs about political, social, religion, *sexual orientation, and gender identity* are often deeply personal and of supreme importance to many members of the school community, staff members should not advocate their personal beliefs in the classroom.”³¹ ■■■ and other staff members received an email from the superintendent outlining that under the policy, teachers could not display pride flags.³² ■■■ worried that he could no longer display photos of himself with his partner. Given the ambiguity of the “advocacy” policy, ■■■ became increasingly worried that he would inadvertently violate the policy by being himself, and the District would use the policy as a pretext to punish him for being an LGBTQ+-identifying teacher.

On May 11th, Pennridge passed Policy 720, which required all students and staff to use the bathroom associated with their sex assigned at birth, regardless of their gender identity. Although the policy stated that students and staff could also use single-user gender-neutral restrooms, the District did not ensure adequate access

³¹ Pennridge School District Policy Manual, *Policy 321: Advocacy Activities*, <https://perma.cc/V5MZ-9P65> (last visited Nov. 7, 2023) (emphasis added).

³² Email on file with author.

to such facilities. Before the policy, [REDACTED] had access to a bathroom two doors down from his room. After the policy, [REDACTED] was forced to choose between outing himself to students and co-workers by using the women's room or walking far across the school to access a single-user non-gendered bathroom. In an attempt to protect himself and comply with the policy, [REDACTED] used the single-user restroom across the school. But because of the distance, he could not make it back to his classroom in time for classes to start and he risked leaving students in his classroom unsupervised at the start or end of a period.

[REDACTED] had after-school extracurricular responsibilities that took place at the high school. When [REDACTED] arrived at the high school building, he had no access to a policy-compliant bathroom. The signage indicating gender-neutral bathrooms in the high school was removed each day at the end of class periods. [REDACTED] reported it to the security guard on duty, as well as his principal, but the District did nothing to remedy the problem. Instead, he would have to find a member of the janitorial staff, ask them to retrieve the sign, and place it on the bathroom door so that he could use it. This meant being forced to out himself on a regular and consistent basis.

These policies made [REDACTED] feel isolated and targeted. The broad scope of the policies meant [REDACTED] had to worry about how to comply with them every day, and the policies' ambiguity meant he had no clarity on how to do so. The stress and isolation caused [REDACTED] serious psychological impacts and even led to severe physical impacts caused by irregular access to bathrooms. [REDACTED] symptoms required increased medical treatment, much of it accompanied by out-of-pocket costs.

In the summer of 2023, [REDACTED] was scheduling his first return to the high school for mandatory teacher conferences and suffered a panic attack as he considered what he would have to go through to use a bathroom. These physical manifestations of the isolation and burden of the policies left [REDACTED] feeling he could not safely return to school. He resigned from his position in the fall of 2023.

V. PSD Has Created a Hostile Environment for Students and Staff

Despite repeated notice of severe and pervasive racial, sex, and gender-based harassment, PSD officials have (1) failed to address the hostile environment; and (2) exacerbated the already existing hostile environment by removing key guardrails that were implemented to protect under-served students and ameliorate the effects of hostility. As the following sections allege, through its failure to act, and through decisions to adopt policies and practices that are hostile and discriminatory to students of color and LGBTQ+ students, PSD has violated Title VI and Title IX.

A. Disbandment of Diversity, Equity, and Inclusion Initiatives.

In response to student and parent complaints about race- and sex-based harassment and pervasive and wide racial disparities in both opportunities and in school discipline in the District, the District, under the leadership of Dr. Bolton, adopted Diversity, Equity and Inclusion (“DEI”) Initiatives at the school and district levels.³³ According to the District’s guidebook, the purpose of the initiatives was to sustain “a diverse, inclusive and equitable learning community.”³⁴ The guidebook called for

³³ Emily Rizzo, *Pennridge schools pause diversity initiatives; NAACP calls it ‘slap in the face,’* WHYY (Aug. 26, 2021), <https://perma.cc/3F6Q-UNGC>.

³⁴ *Id.*

“culturally and linguistically responsive learning activities for employees, students, and the community to address the fact that within the Pennridge boundaries racism, homophobia, anti-Semitism, lack of understanding of our LGBTQ+ community, prejudice against our ESL students and non-English speaking students, exist.”³⁵

In August of 2021, however, the Pennridge School Board met and voted to pause all DEI initiatives.³⁶ District Superintendent Bolton spoke out against pausing these initiatives at the meeting, saying: “This has not been the district’s recommendation, the administrative recommendation in terms of a step for moving forward.”³⁷ Parents and community members voiced concern that eliminating the initiative would increase the racial harassment that children of color already face in school.³⁸ However, every member of the Board voted in support of ending the initiative, except for one.³⁹ Shortly after the vote, DEI-related materials were hidden on Pennridge’s website.⁴⁰ Additionally, the webpage housing the School District’s DEI mission statement and District goals was almost entirely censored and required a username and password to view.⁴¹

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Pennridge School Board, Aug. 23, 2021, Meeting Minutes, (9–10)
<https://perma.cc/Y3BN-HK72>.

⁴⁰ Ashley R. Williams, *Bucks NAACP, ADL Philadelphia condemn Pennridge’s halt in diversity, equity, and inclusion efforts* (Aug. 31, 2021, 10:00 PM),
<https://perma.cc/22TR-W5YW>.

⁴¹ *Id.*

The vote to disband the DEI initiative had a direct impact on marginalized students at Pennridge. One student wrote in an op-ed in February of 2022 that the move “furthers the divide and strikes racial minority students at Pennridge.”⁴²

The Board replaced the initiative with an ad hoc committee, the “CommUnity Committee.”⁴³ The committee included a District representative, Jane Cullen, the then Vice President of the Board who had just advocated for ending the initiative.⁴⁴ Cullen had previously come under fire for posting insensitive content to her social media profiles, including claims that systemic racism and homophobia do not exist in America.⁴⁵ Cullen’s appointment to an oversight position was criticized by the regional director of the Anti-Defamation League of Philadelphia and the President of the Bucks County NAACP.⁴⁶ In response, Pennridge issued a statement on Facebook insisting that the pause of DEI activities would be temporary.⁴⁷ Despite these assurances, to date, DEI initiatives have not resumed, which is detrimental to students of color, LGBTQ+ students and other marginalized students.

⁴² Annika Verma, *Pennridge halted its diversity efforts. Why one student says that was a bad move* (Feb. 11, 2022), <https://perma.cc/L4MH-L6TP>.

⁴³ Ashley R. Williams, *Bucks NAACP, ADL Philadelphia condemn Pennridge’s halt in diversity, equity and inclusion efforts* (Aug. 31, 2021), <https://perma.cc/G46F-ZSCW>; Cyril Mychalejko, *Pennridge’s Diversity Meeting Meltdown Demonstrates Why DEI is Desperately Needed*, BUCKS COUNTY BEACON (Feb. 25, 2022), <https://perma.cc/3NTW-PTPT>.

⁴⁴ Ashley R. Williams, *Bucks NAACP, ADL Philadelphia condemn Pennridge’s halt in diversity, equity and inclusion efforts* (Aug. 31, 2021), <https://perma.cc/63F6-NQJY>.

⁴⁵ Josh Popichak, *Pennridge School Board Vice President Under Fire for Tweets*, SAUCON SOURCE (June 18, 2020), <https://perma.cc/3YZC-Z3BF>.

⁴⁶ *Id.*

⁴⁷ @Pennridge School District, FACEBOOK (Aug. 27, 2021), <https://perma.cc/6QMG-MYWF>.

Furthermore, the “CommUnity Committee” inflamed tensions and stymied the very goals laid out for DEI initiatives in the District’s guidebook. Although the CommUnity Committee was formed in November of 2021,⁴⁸ it failed to reach consensus on a basic mission statement four months into its existence.⁴⁹

During the February “CommUnity” Committee meeting, Committee member [REDACTED] [REDACTED] and his wife [REDACTED] [REDACTED] were singled out during public comment.⁵⁰ The incident underscored the hostility facing Black families in the District. Mr. and Mrs. [REDACTED] are a Black family that resides in PSD and have attempted to make their community more inclusive by founding the PairUP Society and serving on the “CommUnity Committee.”⁵¹ The speaker launched into a lengthy diatribe criticizing Mr. and Mrs. [REDACTED] for their work and their membership in the local NAACP

⁴⁸ Maddie Hanna, *A Bucks County school district dropped its diversity program. Black families say the district isn’t acknowledging racism*, THE PHILADELPHIA INQUIRER (Apr. 25, 2022), <https://perma.cc/2D9C-AZUS>.

⁴⁹ Cyril Mychalejko, *Pennridge’s Diversity Meeting Meltdown Demonstrates Why DEI is Desperately Needed*, BUCKS COUNTY BEACON (Feb. 25, 2022), <https://perma.cc/9G99-CQ2R>.

⁵⁰ *Pennridge CommUnity Committee Meeting – February 23, 2022*, YOUTUBE (Feb. 23, 2022), https://www.youtube.com/watch?v=iEkW5Q_ku4w (5:38-9:34).

⁵¹ Maddie Hanna, *A Bucks County school district dropped its diversity program. Black families say the district isn’t acknowledging racism*, THE PHILADELPHIA INQUIRER (Apr. 25, 2022), <https://perma.cc/NR3T-8L55> (noting that Joan Cullen consistently questioned “whether Pennridge needed DEI at all”).

chapter.⁵² Amidst the inflammatory public comment period, another member of the audience referred to a Black man as a “boy” in a racially derogatory manner.⁵³

Just a month later, the Board disbanded the “CommUnity Committee.”⁵⁴ Members of the committee who were given PSD emails and told to only use these emails for communication about the committee, had their permissions revoked and lost all access to email messages and documents that they had discussed. In April of 2022, a creator of Pennridge’s initial DEI initiatives, a Black Pennridge alumnus, said that Pennridge “totally ripped [the initiatives] apart,” despite her receiving positive receptions for similar work in other Bucks County school districts.⁵⁵ During the turmoil and after the dissolution of the “CommUnity Committee,” Black students and their parents reported intense harassment.⁵⁶ At an April Board meeting, a parent of biracial children implored the Board not to end diversity efforts, describing the harassment and use of the N-word her children face on a regular basis.⁵⁷ Other parents have voiced similar complaints, reporting that harassment included “bias

⁵² Cyril Mychalejko, *Pennridge's Diversity Meeting Meltdown Demonstrates Why DEI is Desperately Needed*, BUCKS COUNTY Beacon (Feb. 25, 2022), <https://perma.cc/3623-CXXY> (see embedded video 7:58 – 8:25).

⁵³ See *Ash v. Tyson Foods Inc.*, 546 U.S. 454, 456 (2006) (finding that even without additional racial modifiers, the term “boy” may be racially discriminatory depending on context and tone of voice).

⁵⁴ Bob Keeler, *Pennridge pauses CommUnity Committee*, THE REPORTER (Mar. 28, 2022), <https://perma.cc/RC8D-8H8J>.

⁵⁵ Maddie Hanna, *A Bucks County school district dropped its diversity program. Black families say the district isn't acknowledging racism*, THE PHILADELPHIA INQUIRER (Apr. 25, 2022), <https://perma.cc/B6WJ-C7NG>.

⁵⁶ *Id.*

⁵⁷ *Id.*

from teachers,” usage of “the N-word by students,” and a second grader being referred to as “Bl*ckey” by a fellow student.⁵⁸

B. 2021–2022 Undermining of History and English Curriculum

During the 2021–2022 school year, the Pennridge School Board chipped away at students’ ability to learn about Black history and other diverse perspectives in the English and History curriculums. These curriculum changes also negatively impacted students’ ability to earn Advanced Placement credits and other prerequisites for college admissions and academic opportunities.⁵⁹ While all students in the District have lost these opportunities, protected classes of LGBTQ+ and Black students bear the brunt of the harm and the intentional action undertaken by the District to erase Black and LGBTQ+ history and diverse perspectives. By abandoning their responsibility to teach students about the harms of inequality and oppression, PSD allows the hostile environment for these underserved students to continue without educating all students about discrimination and tools that can be used to challenge and overcome it.

1. Removal of Diversity and Oppression Discussions from 9th Grade English Curriculum

⁵⁸ *Id.*

⁵⁹ See Ileana Najarro, *College Board Warns Against Censoring Its AP Courses*, EDUCATION WEEKLY (March 14, 2022), <https://perma.cc/75SC-9FZS> (warning that curriculum censorship could risk schools and students losing Advanced Placement credits); see also Christy Byrd, *Does Culturally Relevant Teaching Work? An Examination from Student Perspectives* SAGE Open (July-Sept. 2016), available at <https://journals.sagepub.com/doi/pdf/10.1177/2158244016660744>, pp. 3–4 (finding that curriculum restrictions that limit diverse education harm LGBTQ+ students and students of color, as well as other enrolled students).

In August of 2021, a group known as “Pennridge for Educational Liberty” successfully advocated for changes to the ninth-grade English curriculum.⁶⁰ At least two units within the curriculum were affected: the “Dreams and Oppressions” unit and the “A Journey Through Literature and Life” unit.⁶¹ These changes are not random; extremist groups aim to remove discussions of systemic inequalities and structural racism.⁶² Pennridge renamed the “Dreams and Oppressions” unit the “Dreams and Challenges” unit.⁶³ They changed the “big idea” questions that framed the unit.⁶⁴ These “big idea” questions initially included the following:

1. Oppression exists in many forms, affecting many groups and individuals.
2. Inequalities are barriers to dreams and ambitions.

These “big ideas” were changed to: “*achieving dreams and fulfilling aspirations requires overcoming challenges.*”⁶⁵

Pennridge also changed the unit’s “essential questions.” They originally were:

1. How does the oppression of one affect the oppression of many?
2. How do inequalities prevent individuals from achieving their dreams?

⁶⁰ Cyril Mychalejko (@cmychalejko), TWITTER (Aug. 22, 2021, 4:34 PM), <https://perma.cc/43RU-FFXS>.

⁶¹ *Id.*

⁶² See Russell Falcon, *Critical race theory ‘buzzwords’ list released, then deleted by Texas policy organization*, KXAN (July 1, 2021), <https://perma.cc/5L8Z-CN9X>.

⁶³ Cyril Mychalejko (@cmychalejko), TWITTER (Aug. 22, 2021, 4:34 PM), <https://perma.cc/QC5W-X3UD>.

⁶⁴ *Id.*

⁶⁵ *Id.* (emphasis added).

These “essential questions” were replaced with the following: “*what challenges might stand in the way of achieving dreams and fulfilling aspirations?*”⁶⁶ Cumulatively, these changes removed the words oppression and inequalities from the unit. They also shifted the focus of the unit from structural inequality faced by marginalized groups in society to challenges faced at the individual level.⁶⁷

The District changed instructional materials for both the “Dreams and Oppressions” unit and the “A Journey Through Literature and Life” unit.⁶⁸ Two books authored by Black writers, *This is My America* by Kim Johnson and *American Street* by Ibi Zoboi, were removed from the “A Journey Through Literature and Life” unit.⁶⁹ *This is My America* is a young adult novel that focuses on racial inequality in the American justice system.⁷⁰ *American Street* is a novel based on Ibi Zoboi’s life experience as a Haitian-American immigrant about a Haitian teen whose mother gets detained after they attempt to immigrate to America.⁷¹ Instructional materials were

⁶⁶ *Id.* (emphasis added).

⁶⁷ These changes are in line with similar attacks by right wing groups in other states. See Russell Falcon, *Critical race theory ‘buzzwords’ list released, then deleted by Texas policy organization*, KXAN (July 1, 2021), <https://perma.cc/5L8Z-CN9X>.

⁶⁸ Emily Rizzo, ‘A small comeback’: Pennridge parents, resisting the school district, are filling little libraries with diverse books, WHYY (Jan. 15, 2022), <https://perma.cc/5C5X-TX9M>.

⁶⁹ *Id.*

⁷⁰ *This is My America* won various awards, including NPR’s “Book of the Year” and the American Library Association’s “Best Fiction for Young Adults” award. PENGUIN RANDOMHOUSE, *This Is My America by Kim Johnson*, <https://perma.cc/6TD5-DS85> (last visited Nov. 7, 2023); AMERICAN LIBRARY ASSOCIATION, *2021 Best Fiction for Young Adults*, <https://perma.cc/3CGF-KAW5> (last visited Nov. 7, 2023).

⁷¹ *American Street* was also highly acclaimed, leading to Zoboi’s selection as a finalist for the National Book Awards for Young People’s Literature in 2017.

added to both units. None of the added materials were created by Black authors or educators.⁷² Instead, the Board replaced these literary works by diverse authors with a biography of Walt Disney that ignores the well-documented history of racist caricatures and ethnic stereotyping that occurred under his leadership at Disney.⁷³

In short, the changes in the instructional materials slashed the number of diverse voices students were exposed to, and instead uncritically celebrated racist histories. At the school board’s public comment section after approving these changes, a then PSD junior stated: “[b]y removing DEI from the curriculum, you will remove important lessons that your students deserve... [b]y removing lessons, you remove the truth, and I deserve the truth.”⁷⁴

2. Undermining the History Curriculum

The Board also changed the history curriculum by undermining the more rigorous credit requirements the District had previously required and censoring textbooks due to their coverage of non-European history. The Board made these changes despite public community outcry and objections from trained history department staff.

NATIONAL BOOK FOUNDATION, *American Street*, <https://perma.cc/ZLD2-R7SJ> (last visited Nov. 7, 2023).

⁷² Cyril Mychalejko (@cmychalejko), TWITTER (Aug. 22, 2021, 4:34 PM), <https://perma.cc/QC5W-X3UD>.

⁷³ *Id.*; Steve Rose, *Cotton plantations and non-consensual kisses: how Disney became embroiled in the culture wars*, THE GUARDIAN (Jun. 16, 2021), <https://perma.cc/S5ZD-FWHK>.

⁷⁴ Ashley R. Williams, *Bucks NAACP, ADL Philadelphia condemn Pennridge's halt in diversity, equity and inclusion efforts* (Aug. 31, 2021), <https://perma.cc/G7B3-LQ7A>.

Jordan Blomgren, a member of the Pennridge School Board, expressed her view that a textbook for the “AP World History: Modern” curriculum was missing “the meat and potatoes” of history because it focused on non-Western cultures.⁷⁵ Blomgren compared a focus on non-Western cultures to “social, emotional learning” and indicated that focusing on non-Western cultures would lead to students not learning the “true history of everything.”⁷⁶ The course instructor selected the book at issue, *World Civilizations* after a process that included reviewing books on the College Board’s example textbook list,⁷⁷ consulting with an online community of “AP World History: Modern” teachers, reading four of the textbooks on the example textbook list, and undertaking a Textbook Adoption Evaluation Rubric for three of those books.⁷⁸ The teacher who selected *World Civilizations* indicated that it matched recent changes made to the curriculum by the College Board and was the “best way to move forward for students.”⁷⁹ The teacher acknowledged that the textbook was relatively weaker on European history but emphasized that the AP exam “doesn’t focus on that,” and that the course “still hits Europe pretty heavily.”⁸⁰ Members of the School

⁷⁵ Pennridge School District’s-Ridge Channel, *Activities/Curriculum/Personnel Committee Meetings - January 3, 2022*, YOUTUBE (Jan. 3, 2022), <https://www.youtube.com/watch?v=KhQgRz1WeI0> (14:06 – 15:06)

⁷⁶ *Id.*

⁷⁷ COLLEGE BOARD, *AP Course Audit* <https://apcentral.collegeboard.org/courses/ap-world-history/course-audit>.

⁷⁸ Pennridge School District’s-Ridge Channel, *Activities/Curriculum/Personnel Committee Meetings - January 3, 2022*, YOUTUBE (Jan. 3, 2022), <https://www.youtube.com/watch?v=KhQgRz1WeI0> (0:00 – 4:00).

⁷⁹ *Id.* at 3:45 – 6:43.

⁸⁰ *Id.* (9:00 – 9:21; 15:04 – 15:48).

Board also criticized the elementary school history curriculum during this meeting, stating concerns including an insufficient focus on “the greatness of America.”⁸¹

In December of 2022, the Pennridge School Board continued to stymie history education at Pennridge by voting to reduce the required number of social studies credits from four to three.⁸² This change was originally conceived to make World History an optional course.⁸³ The changes in the curriculum do not conform with the Pennsylvania Common Core standards for History adopted and implemented across the Commonwealth, which require students to learn about the contributions of different groups, ethnic and racial relations, and conflict and cooperation among groups in order to build historical thinking skills.⁸⁴

The change was strongly opposed by staff and community members. Twenty-seven Pennridge social studies teachers came together to write an op-ed against the change, citing concerns that the change would negatively impact students entering “an increasingly polarized body politic” and hurt the competitiveness of Pennridge students relative to peers in nearby school districts who would be required to take four credits of social studies, with some of those peers having earned two required world history credits.⁸⁵ They also lamented the lack of school community input

⁸¹ *Id.*

⁸² Pennridge School Board, Dec. 5, 2022 Meeting Minutes, 4-6, <https://perma.cc/X8YV-CFMH>.

⁸³ Aubri Juhasz and Emily Rizzo, *Pennridge cuts social studies requirements, but keeps world history course*, WHYY (Dec. 9, 2022), <https://perma.cc/FLA8-7JB7>.

⁸⁴ See 22 Pa. Code, Appendix C, Academic Standards for History, available at <https://perma.cc/L4EG-NHDM>.

⁸⁵ *Id.*

solicited by the Board throughout the process.⁸⁶ Students also opposed the change, creating a petition that received hundreds of signatures.⁸⁷ Eleven students spoke against the change at the board meeting before the vote occurred. Student comments included remarks that the change would create a mindset that would disregard the importance of history and “breed hidden prejudice” in the community and commented that the change represented haphazard and malicious curriculum manipulation.⁸⁸

C. Banning of Practices and Materials Fostering Inclusion During the 2021–2022 School Year.

Throughout the 2021–22 school year, the Pennridge School Board and PSD Administration continued to remove diverse learning materials and ban practices designed to promote a healthy learning environment for Black and LGBTQ+ students, further violating its duty to ensure that students are not subjected to a hostile environment.⁸⁹ According to a middle school teacher in PSD, in September of 2021 she witnessed the assistant superintendent, Dr. Kathy Schied, instruct the school’s principal to remove a poster that stated, “the beauty of our world lies within the diversity of its people” from a hallway.⁹⁰ Other teachers were also required to

⁸⁶ Pennridge Social Studies Teachers, *27 Pennridge teachers deride planned cut to Social Studies requirement*, (Nov. 25, 2022), <https://perma.cc/493F-MQC6>.

⁸⁷ Aubri Juhasz and Emily Rizzo, *Pennridge cuts social studies requirements, but keeps world history course*, WHY Y (Dec. 9, 2022), <https://perma.cc/5A8R-W7BA>.

⁸⁸ *Id.*; Pennridge School District’s-Ridge Channel, *December 5, 2022 - PSD School Board Meeting*, YOUTUBE (Dec. 5, 2022), <https://www.youtube.com/watch?v=JHPeoRLzNqc>.

⁸⁹ Emily Rizzo, *‘I don’t trust them’: Free church-based tutoring service recommended on Pennridge school website raises concern*, WHY Y (Feb. 27, 2022), <https://perma.cc/FU7J-K555>.

⁹⁰ *Id.*

remove bulletins outside their classrooms and pictures on their doors for referencing LGBTQ+ diversity. Dr. Bolton condemned the following bulletin board, that was put up by the DEI committee resulting in its' removal.



That same month, the Director of Pupil Services at Penridge, Dr. Cheri Derr, announced new directives for school guidance counselors, social workers, and nurses.⁹¹ The guidelines instructed elementary school faculty not to “discuss or use terms related to LGBTQ [people].”⁹² Regarding instances in which middle school or high school students request a name or pronoun change, the guidelines required the notification and consent of the student’s parents before allowing a student to go by a different name or pronoun.⁹³ The guidelines also required school counselors to

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

investigate how “serious” a student requesting a name or pronoun change was before granting the change and allowed the counselors to notify the parents of the student requesting the change about the request against the will of the student if the counselor was concerned for student’s safety.⁹⁴ The guidelines also banned teachers from using different names or pronouns for students until they received official notification from a counselor that the student’s parents had approved the change.⁹⁵ At least one student reported that after the school informed his parents about his transgender identity without his consent, he was disowned by his parents.⁹⁶

D. Book-Banning and Censorship

Over the last two years, the Pennridge School Board has both removed and limited access to books in the library and classrooms discussing diverse viewpoints, oppression, and racial and gender-based discrimination.⁹⁷ The books that have been singled out for removal or limited access overwhelmingly have themes related to race, gender, and sexuality and are written by authors who are women, LGBTQ+ and/or people of color.

In December of 2021, the Pennridge School Board removed books about LGBTQ+ identities, including *Heather Has Two Mommies*, from all District

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Maddie Hanna, *Is Pennridge secretly banning books? This dad went to court to find out*, THE PHILADELPHIA INQUIRER (Oct. 8, 2023), <https://perma.cc/U753-X8KT>.

elementary school libraries.⁹⁸ The Assistant Superintendent of Elementary Education, Anthony Rybarczyk, accompanied the removal of *Heather Has Two Mommies* with an email ordering “library books with content regarding gender identity be removed from the current elementary student circulation.”⁹⁹ The email informed teachers and administrators that the books would be held only where counselors and administrators would have access to them.¹⁰⁰ Under this policy, only parents or guardians could request access to these materials.¹⁰¹

In July of 2022, Pennridge School Board President Joan Cullen spoke with Talk Radio’s Dom Giordano to discuss Central Bucks’ push to ban books from District libraries.¹⁰² The Central Bucks District is a neighboring county. Cullen said that Pennridge decided that books about transgender youth were not a topic fit for school.¹⁰³ Cullen expressed that “ninety percent of children that develop gender dysphoria revert to their biological sex.”¹⁰⁴ Cullen did not cite statistics, but research shows this is not true.¹⁰⁵

⁹⁸ Emily Rizzo, *As a Bucks County school district removes LGBTQ books from libraries, families and faculty fear for civil rights*, WHY (Dec. 26, 2021), <https://perma.cc/3Q7D-WXNZ>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² The Dom Giordano Program, *Pennridge SD’s Joan Cullen on Push to Ban ‘Sexualized Content’ from Libraries* (July 26, 2022), perma.cc/5Z8K-7B9U.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at (04:10).

¹⁰⁵ These claims are not supported by scientific studies. See Valeria Bustos et. al, *Regret after Gender-affirmation Surgery: A Systematic Review and Meta-analysis of Prevalence*, PLASTIC RECONSTRUCTION SURGERY GLOBAL OPEN (Mar. 19, 2021) (finding that regret for transitioning was at about 1%).

In September of 2022, Pennridge abruptly halted Banned Books Week,¹⁰⁶ a tradition that has existed for at least fifteen years. Banned Books Week featured books such as *The Hate U Give*.¹⁰⁷ In an op-ed, Robin Reid, then a high school senior, wrote that the banned books “are ones that students can relate to. Queer students can feel represented and heard by books that acknowledge their struggles; students of color can feel validated and seen in a school and community where they make up such a minority.”¹⁰⁸ The student emphasized that books “can be lifelines” and that her school’s actions were “heartbreaking.”¹⁰⁹ Other parents reported the removal of books such as *Tears of Tiger*,¹¹⁰ which helped middle schoolers process challenging

¹⁰⁶ Robin Reid, *In Pennridge School District Where They Banned Banned Books Week, I Read As A Form Of Protest*, BUCKS COUNTY BEACON (Sep. 23, 2022) <https://perma.cc/GDM6-C38R>.

¹⁰⁷ Will Bunch, *A school where even Banned Book Week was banned*, PHILADELPHIA INQUIRER (Sep. 27, 2022) <https://perma.cc/V26C-T439>; See *The Hate U Give*, BARNES & NOBLE <https://www.barnesandnoble.com/w/the-hate-u-give-a-c-thomas/1124651146> (last visited Nov. 7, 2023) (“One of the most important recent books. Caught between two worlds, Starr is the sole witness when police murder her unarmed best friend, leaving her stuck debating right and wrong, what to do and what not to do. In a story that speaks directly to the recent string of such cases, this book is sure to remind readers of the work we still have to do in this world.”).

¹⁰⁸ Robin Reid, *In Pennridge School District Where They Banned Banned Books Week, I Read As A Form Of Protest*, BUCKS COUNTY BEACON (Sep. 23, 2022) <https://perma.cc/6A6U-G38T>.

¹⁰⁹ *Id.*

¹¹⁰ *Tigers Don’t Cry*, BARNES & NOBEL <https://www.barnesandnoble.com/w/tears-of-a-tiger-sharon-m-draper/1100333656?ean=9781442489134> (last visited Nov. 7, 2023) (“Tigers don’t cry—or do they? After the death of his longtime friend and fellow Hazelwood Tiger in a car accident, Andy, the driver, blames himself and cannot get past his guilt and pain. While his other friends have managed to work through their grief and move on, Andy allows death to become the focus of his life. In the months that follow the accident, the lives of Andy and his friends are traced through a series of letters, articles, homework assignments, and dialogues, and it becomes clear that Tigers do indeed need to cry.”).

events in life while feeling affirmed. The District has not provided a justification for removing the books. In one case, the District tried to appease a parent [REDACTED]

At the beginning of the 2022–2023 school year, the Pennridge School Board Director announced that “smut and filth” existed in the school libraries.¹¹¹ Under Policy 109, which dictates what resource materials are allowed in District schools, the goal was to rid libraries of all “age inappropriate” books.¹¹² When Policy 109 underwent revision, the word “sex” was included over 31 times.¹¹³ At the September 2022 Board meeting to approve the changes to Policy 109, many members used words such as “pornographic,” “smut,” and “criminal” to describe library books.¹¹⁴ The Board claimed to refer to a passage in a book entitled *Allegedly* to describe inappropriate material.¹¹⁵ A Pennridge parent later discovered the passage did not exist.

The next day, Darren Lausten, a Pennridge parent who had attended the Board meeting checked what books Pennridge High School library had removed

¹¹¹ Darren Lausten, *Why I’m Taking Pennridge School District to Court*, BUCKS COUNTY BEACON (Mar. 6, 2023) <https://perma.cc/786P-AHXE>.

¹¹² *Id.*; Pennridge School District, *Policy 109 Resource Materials*, <https://perma.cc/62JS-4AEB> (last visited Nov. 7, 2023).

¹¹³ Darren Lausten, *Why I’m Taking Pennridge School District to Court*, BUCKS COUNTY BEACON (Mar. 6, 2023) <https://perma.cc/786P-AHXE>.

¹¹⁴ Maddie Hanna, *Is Pennridge Secretly Banning Books? This Dad Went to Court to Find Out*, THE PHILADELPHIA INQUIRER (Oct. 8, 2023), <https://perma.cc/XE6Z-R479>.

¹¹⁵ *Id.*

through the online card catalog.¹¹⁶ He found that *Looking for Alaska*¹¹⁷ by John Green no longer remained in the database. The District had checked out all copies of the book for an entire year.¹¹⁸ Superintendent Dr. Bolton claimed this was a result of librarians evaluating their collections based on new policy language.¹¹⁹

Parents filed a series of “right-to-know” requests to determine which library books the District had challenged, reviewed, or removed.¹²⁰ The District denied all the requests.¹²¹ Darren Lausten filed an appeal with the PA Office of Open Records.¹²² The District responded with a report that it claimed detailed the removed books.¹²³ However, the report was incomplete, failing to include the “controversial books” in the report, such as *Looking for Alaska*, even though it remained checked out until the end of the next school year.¹²⁴ The District produced a second report.

¹¹⁶ Darren Lausten, *Why I’m Taking Pennridge School District to Court*, BUCKS COUNTY BEACON (Mar. 6, 2023) <https://perma.cc/786P-AHXE>.

¹¹⁷ *Looking for Alaska*, BARNES & NOBLE <https://www.barnesandnoble.com/w/looking-for-alaska-john-green/1100255278?ean=9780142402511> (last visited Nov. 7, 2023) (“*Looking for Alaska* brilliantly chronicles the indelible impact one life can have on another. A modern classic, this stunning debut marked #1 bestselling author John Green’s arrival as a groundbreaking new voice in contemporary fiction.”).

¹¹⁸ Maddie Hanna, *Is Pennridge Secretly Banning Books? This Dad Went to Court to Find Out*, THE PHILADELPHIA INQUIRER (Oct. 8, 2023), <https://perma.cc/XE6Z-R479>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Darren Lausten, *Why I’m Taking Pennridge School District to Court*, BUCKS COUNTY BEACON (Mar. 6, 2023) <https://perma.cc/786P-AHXE>.

¹²³ *Id.*

¹²⁴ Maddie Hanna, *Is Pennridge Secretly Banning Books? This Dad Went to Court to Find Out*, THE PHILADELPHIA INQUIRER (Oct. 8, 2023), <https://perma.cc/XE6Z-R479>.

However, that report still had several books missing that addressed LGBTQ+ or gender identity topics, such as *Flamer*¹²⁵ by Mike Curato.¹²⁶ Those books remained checked out on the library’s online database.¹²⁷ Mr. Lausten presented the District with evidence of the missing books. The District produced a third report that still did not comport with the online card catalog.¹²⁸ The District insisted that they could not create a report of missing books, as faculty members were checking out books under student accounts.¹²⁹ A comparison of the books missing from the Pennridge online card catalog shows that some of the titles missing line up with a long list of books historically targeted by Moms for Liberty.¹³⁰

On October 20th, 2023, the Court of Common Pleas ruled in favor of Lausten’s appeal of the District’s denial of his right-to-know request, finding that the school had effectuated a cover-up and thwarted public access to public information.¹³¹ The Court went on to find that the school not only failed to accurately respond to Lausten, but

¹²⁵ *Flamer*, BARNES & NOBLE <https://www.barnesandnoble.com/w/flamer-mike-curato/1134065702?ean=9781250756145> (last visited Nov. 7, 2023) (“It’s the summer between middle school and high school, and Aiden Navarro is away at camp. Everyone’s going through changes—but for Aiden, the stakes feel higher. As he navigates friendships, deals with bullies, and spends time with Elias (a boy he can’t stop thinking about), he finds himself on a path of self-discovery and acceptance.”).

¹²⁶ Darren Lausten, *Why I’m Taking Pennridge School District to Court*, BUCKS COUNTY BEACON (Mar. 6, 2023) <https://perma.cc/786P-AHXE>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ In June 2023 the Southern Poverty Law Center declared Moms for Liberty an “anti-government extremist entity.” Moms for Liberty, SOUTHERN POVERTY LAW CENTER <https://perma.cc/8DMP-HAE8> (last visited Nov. 7, 2023).

¹³¹ *Lausten v. Pennridge Sch. Dist.*, No. 2023-01022 (Ct. Com. Pl. of Bucks Cnty. Oct. 20, 2023). Attached as Attachment A.

also manipulated records in an attempt to distort their actions and “change the past.”¹³²

Under controlling law, schools may not remove books from a school library “simply because they dislike the ideas contained in those books” or in an effort “to prescribe what must be orthodox in politics, nationalism, religion, or other matters of opinion.”¹³³ In practice, this means school boards cannot remove books from libraries simply because they discuss controversial racial topics or because they depict gay or lesbian relationships.¹³⁴

E. 2022–2023 Policy Changes Limiting Expression

At the beginning of the 2022–23 school year, the Pennridge School Board advanced two policies that furthered the hostile environment for Black and LGBTQ+ students within the District. One policy, the “Advocacy Activities” policy, sought to control the conduct of District employees, while the other policy, the “Student Dissemination of Non-school Materials” policy, sought to control the conduct of students. Together, the policies severely restricted the ability of teachers and students to ensure a welcoming environment for marginalized students by limiting their ability to display symbols or disseminate materials that foster inclusion. Moreover, the District has continued to restrict diverse learning materials and the honest discussion of history.

¹³² *Id.*

¹³³ *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (citing *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943)).

¹³⁴ *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864 (D. Kan. 1995).

1. Advocacy Activities Policy

The opening paragraph of the “Advocacy Activities” policy includes the following statement: “Because personal beliefs about political, social, religion, *sexual orientation, and gender identity* are often deeply personal and of supreme importance to many members of the school community, staff members should not advocate their personal beliefs in the classroom.”¹³⁵ The policy later instructs that “employees shall not engage in advocacy activities during assigned work hours on property under the jurisdiction of the Board,” and that “all staff will retain their personal views and remain neutral on advocacy-related matters during assigned work hours.”¹³⁶ The policy defines advocacy as “using power, position, or authority to advise or persuade.”¹³⁷ The controversial policy was fast-tracked during its passage, bypassing a second reading and further discussion.¹³⁸

During public comment, a PairUp member spoke out against the policy. She stated that the board had repeatedly used the term “political” to refer to Black and brown people and the issues affecting them as a way to avoid addressing the pervasive and systemic harassment of Black children in the district.¹³⁹ She went on

¹³⁵ Pennridge School District Policy Manual, *Policy 321: Advocacy Activities*, (last visited Nov. 7, 2023) (emphasis added).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Fox29 Philadelphia, *Pennridge School District approves new controversial policy banning advocacy symbols from classrooms*, YOUTUBE (Sep. 30, 2022) <https://perma.cc/6KTK-7KNA>.

¹³⁹ Pennridge School District, *Curriculum/Activities/Personnel/Policy Committee Meetings* (32:05) (Aug. 15, 2022) YOUTUBE, https://www.youtube.com/live/LWeX55nruUU?si=7tq4avL-Lg_MYuXA&t=1926 (last visited Nov. 7, 2023).

to cite ten emails from parents of Black children detailing multiple incidents of children as young as second grade being called “nigger,” “Black nigger,” and “bitch Black nigger.”¹⁴⁰ As well as Black students having their hair nonconsensually touched by other students and mocked for how different it was. All of these issues were reported to school officials, but none were addressed.¹⁴¹

As passed, the “Advocacy Activities” policy effectively prevents teachers from providing a welcoming environment for marginalized students. For example, it prevents teachers from hanging pride flags or displaying materials that support LGBTQ+ students.¹⁴² Policy 321 states: “[b]ased on the categories in the policy, remove all advocacy related materials from district property by Tuesday, October 4th. Examples from each category include: religion (cross and other religious symbols), sexual orientation (pride materials), social (pro-life/choice), political (party affiliation), geo-political (Ukrainian flags).”¹⁴³ One board member went so far as to call pride flags “offensive to Christians” during arguments over their place in schools.¹⁴⁴ Students have put the District on notice through the press that the removal of these materials has led to them feeling “erased” and “less safe.”¹⁴⁵

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Pennridge School District Policy Manual, *Policy 321: Advocacy Activities*, <https://perma.cc/V5MZ-9P65> (last visited Nov. 7, 2023).

¹⁴³ *Id.*

¹⁴⁴ Will Bunch, *A school where even Banned Book Week was banned*, PHILADELPHIA INQUIRER (Sep. 27, 2022) <https://perma.cc/V26C-T439>.

¹⁴⁵ [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Students have pointed out that, although the policy and

its advocates claim to target more than just discussion of and materials related to

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

LGBTQ+ identity,¹⁴⁹ the only real effect of the policy “was the rainbows and the Pride flags,” evidencing a much narrower intent and impact.¹⁵⁰

2. Student Dissemination of Non-school Materials Policy

In addition to the censorship teachers experienced as a result of the advocacy policy, students were also the subject of new, overly broad and vaguely outlined limitations on the dissemination of “nonschool materials.” The “Student Dissemination of Nonschool Materials Policy” requires students “who wish to disseminate nonschool materials on school property” to “obtain approval by submitting them at least one week in advance to the building principal or designee.”¹⁵¹ Dissemination is defined as “students distributing or publicly displaying nonschool materials to others.”¹⁵² Nonschool materials are “any printed, technological, or written materials ... *including but not limited to* fliers, invitations, announcements, pamphlets, posters, online discussion areas and digital bulletin boards, personal websites, *and the like.*”¹⁵³

¹⁴⁹ Pennridge School District Policy Manual, *Policy 321: Advocacy Activities*, <https://perma.cc/V5MZ-9P65> (last visited Nov. 7, 2023); Fox29 Philadelphia, *Pennridge School District approves new controversial policy banning advocacy symbols from classrooms*, YOUTUBE (Sep. 30, 2022) <https://perma.cc/6KTK-7KNA>.

¹⁵⁰ [REDACTED]

¹⁵¹ Pennridge School District Policy Manual, *Policy 220: Student Dissemination of Nonschool Materials*, <https://perma.cc/94DD-P3LF> (last visited Nov. 7, 2023).

¹⁵² *Id.*

¹⁵³ *Id.* (emphasis added).

The “Student Dissemination of Nonschool Materials Policy” also limits “Student Expression.”¹⁵⁴ Expression is defined as “verbal, written, technological, or symbolic representation or communication.”¹⁵⁵ The policy expressly prohibits student expression in many instances, including expression that is viewed as “defamatory, obscene, lewd, vulgar, or profane.”¹⁵⁶

The ambiguity surrounding the policy has created an environment in which students and parents are deeply concerned about students’ ability to express themselves and be their authentic selves within the District.¹⁵⁷ For example, the Legal Director of the ACLU of Pennsylvania noted that the policy could “limit a student who wants to wear a pride sticker.”¹⁵⁸ Parents openly questioned whether the policy would prevent their children from wearing a shirt that contained text reading “love is love.”¹⁵⁹ Most strikingly, the Pennridge Superintendent mentioned during a committee meeting that the effect of the policy could go beyond its intent, drawing into its orbit items such as “valentines at elementary school.”¹⁶⁰

F. School Board Departs from Ordinary District Practice to Implement Hillsdale Curriculum Over Community Objections.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Steve Althouse, *Pennridge School District advances policies on student expression, teacher advocacy*, WFMZ (Aug. 23, 2022) <https://perma.cc/ERA7-97PB>.

¹⁵⁸ Emily Rizzo, *Pennridge proposed policy on student expression goes ‘way further than anything I have ever seen’ ACLU lawyer says*, WHYY (Jul. 29, 2022) <https://perma.cc/A94E-774T>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

In May of 2023, the Pennridge School Board invited a consultant from Vermilion, Jordan Adams, to present via Zoom during the curriculum committee portion of the meeting. Jordan Adams is the listed registrant for Vermilion Education LLC, which has been in operation since early 2023.¹⁶¹ Vermilion’s stated mission is to “help public school board majorities provide an accurate, robust, and ideology-free education to each child” but lists little detail beyond that.¹⁶² Adams graduated from the conservative Christian Hillsdale College and created the Hillsdale 1776 curriculum.¹⁶³

The 1776 curriculum includes a 2,400-page lesson plan collection that teaches American exceptionalism and is widely criticized for whitewashing history.¹⁶⁴ The Pennridge School District hired Jordan Adams to review and adapt the PSD curriculum.¹⁶⁵ Jordan Adams recently spoke at the Moms for Liberty national

¹⁶¹ Katie LaGrone, *What is Vermilion Education and why Florida school boards should care*, ABC ACTION NEWS WFTS (Mar. 4, 2023) <https://www.abcactionnews.com/news/state/what-is-vermilion-education-and-why-florida-school-boards-should-care>.

¹⁶² *Mission and Principles*, VERMILION EDUCATION LLC, <https://perma.cc/T7GZ-DMXS> (last visited Nov. 7, 2023).

¹⁶³ *Id.*

¹⁶⁴ Princeton Historian Sean Wilentz told the Inquirer, “[the curriculum] fundamentally distorts modern American history into a crusade of righteous conservative patriots against heretical big-government liberals.” Maddie Hanna, *Pennridge approves controversial new curriculum despite opposition, but delays some courses until next year*, PHILADELPHIA INQUIRER (Aug. 29, 2023) <https://perma.cc/KK4H-VNVE>; Peter Greene, *As Moms For Liberty Meets In Philadelphia, Don’t Underestimate Their Extremism And The Threat They Pose*, BUCKS COUNTY BEACON (June 23, 2023) <https://perma.cc/CW93-QT7U>.

¹⁶⁵ Maddie Hanna, *Pennridge approves controversial new curriculum despite opposition, but delays some courses until next year*, PHILADELPHIA INQUIRER (Aug. 29, 2023) <https://perma.cc/KK4H-VNVE>.

summit in Philadelphia.¹⁶⁶ Adams claimed, “What I’m bringing to the table here is the inside information...the fox is in the henhouse.”¹⁶⁷ Adams later objected to a course for 12th graders because it addresses stereotypes, racism, prejudice, discrimination, and racial and ethnic inequality in the United States.¹⁶⁸

In June of 2023, Pennridge School Board voted to approve a contract with Vermilion, despite community and staff opposition.¹⁶⁹ The contract was placed on the meeting’s agenda only 24 hours ahead of time and pays Adams \$125 per hour plus travel and accommodation expenses, with no expense or time limits.¹⁷⁰ Parents, students, teachers, and community members voiced opposition to the proposed contract and outrage at the abrupt manner in which it was proposed.¹⁷¹ Teachers voiced additional frustration with the contract because of its departure from normal

¹⁶⁶ In June 2023, the Southern Poverty Law Center sanctioned Moms for Liberty as a hate group. Moms for Liberty, SOUTHERN POVERTY LAW CENTER <https://perma.cc/8DMP-HAE8> (last visited Nov. 7, 2023). Moms for Liberty has hosted a big money fundraiser for Fox News host Megyn Kelly and given Ron DeSantis an award for his work to “promote freedom.” Peter Greene, *As Moms For Liberty Meets In Philadelphia, Don’t Underestimate Their Extremism And The Threat They Pose*, BUCKS COUNTY BEACON (June 23, 2023) <https://perma.cc/CW93-QT7U>.

¹⁶⁷ *Leaked Video Audio of Vermilion Education Head Jordan Adams’s Presentation to Moms for Liberty*, BUCKS COUNTY BEACON, (July 12, 2023) <https://perma.cc/N55X-NMDB>.

¹⁶⁸ *Id.*

¹⁶⁹ Maddie Hanna, *Pennridge approves controversial new curriculum despite opposition, but delays some courses until next year*, PHILADELPHIA INQUIRER (Aug. 29, 2023) <https://perma.cc/KK4H-VNVE>.

¹⁷⁰ John Worthington, *Pennridge School Board approves Hillsdale-influenced social studies curriculum, with partial postponement*, THE REPORTER (Aug. 29, 2023) <https://perma.cc/GZ46-S45V>.

¹⁷¹ Maddie Hanna, *Pennridge approves controversial new curriculum despite opposition, but delays some courses until next year*, PHILADELPHIA INQUIRER (Aug. 29, 2023) <https://perma.cc/KK4H-VNVE>.

procedure. Typically, the trained and certified administrators and teachers of PSD create and analyze curriculum based on their knowledge of the District and students, in accordance with a process detailed in the Public School Code.¹⁷²

Parents in the District have attempted to opt out of the Vermilion Curriculum, but the District has not provided a process for responding to these requests. For example, a member of PairUP is concerned that his older child, who is a freshman in high school, had the benefit of learning about the experiences of people of different races and ethnicities in American history, while his younger child, who is entering middle school, will experience a curriculum that excludes diversity. This parent has opted out of the Hillsdale curriculum, but the District has not responded to the opt-out request.¹⁷³ As a result, students whose parents have requested to opt out of the Vermilion curriculum may nevertheless be subjected to the curriculum over their parents' objections and deprived of any alternative history curriculum.

G. Pennridge School District Passes Discriminatory Bathroom Policy, Harming LGBTQ+ Students and Staff.

On May 11, 2023, the School Board passed Policy 720, requiring students and staff to use bathrooms in line with their sex, regardless of their gender identity.¹⁷⁴

¹⁷² Pennsylvania law requires a recommendation from the superintendent before a change in textbooks is made. A change in textbooks cannot be made without the superintendent's approval unless two-thirds or more of the school board votes for it. *See* 24 P.S § 8-803.

¹⁷³ Emails on file with author.

¹⁷⁴ Pennridge School District Policy Manual, Section 700, Code 720 (May 10, 2023) <https://perma.cc/J8LC-CQBM> (last visited Nov. 7, 2023); Maddie Hanna, *The Pennridge board has passed a bathroom policy that advocates say discriminates*

The policy was approved by a 7-1 vote, despite public comment criticizing the harmful effect it would have on LGBTQ+ students and staff.¹⁷⁵ The policy illegally requires trans and non-binary students to “out” themselves by requiring them to use the bathroom associated with their biological sex.¹⁷⁶ Although the policy states that students and staff can use single-user non-gendered bathrooms, the School Board and School District have not ensured there is adequate access to these types of facilities.¹⁷⁷

[REDACTED]

[REDACTED]

[REDACTED] explained that there were only two sets of single-user bathrooms in the entire high school, both located on the third floor. Because of where these facilities are located, the policy could require students to miss up to fifteen minutes of class in order to get to the required restroom. [REDACTED] also explained that the high school gives out color-coded bathroom slips, so that a student in a classroom located on the first-floor is given a slip that only allows them to use first-floor

against transgender students, PHILADELPHIA INQUIRER (May 12, 2023) <https://perma.cc/GH5W-9YWP>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*; Threats to “out” students constitute a violation of their privacy. *See Sterling v. Borough of Minersville*, 232 F.3d 190 (3d Cir. 2000) (holding that a police officer’s threat to out a teenage arrestee as gay to the teen’s grandfather violated the teen’s constitutional right to privacy). And the Department of Education has instructed schools to implement policies that protect trans and non-binary students’ privacy, including their sex assigned at birth. U.S. DEP’T OF EDUC. OFFICE OF CIVIL RIGHTS, Supporting Transgender Youth in School (2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ed-factsheet-transgender-202106.pdf>

¹⁷⁷ Maddie Hanna, *The Pennridge board has passed a bathroom policy that advocates say discriminates against transgender students*, PHILADELPHIA INQUIRER (May 12, 2023) <https://perma.cc/GH5W-9YWP>.

bathrooms. This means trans, non-binary, and genderqueer students seeking to use the non-gendered bathrooms on the third floor would have to out themselves to explain why their pass does not correspond to the floor they are on. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is exacerbated by the

long walks to isolated bathrooms, which by the nature of the policy, “out” the student to those around them.

H. School Board Refuses to Survey Students on Harassment.

The Pennridge School Board also changed its longstanding District policy to survey students about the climate in the District. On February 6, 2023, the School Board voted to discontinue participation in the Pennsylvania Youth Survey (PAYS).¹⁷⁸ PAYS is a partnership between Penn State’s Evidence-based Prevention

¹⁷⁸ The PAYS survey is anonymous and there is no cost to any school participating. Pennsylvania Commission on Crime and Delinquency, [https://www.pccd.pa.gov/Juvenile-Justice/Pages/Pennsylvania-Youth-Survey-\(PAYS\).aspx](https://www.pccd.pa.gov/Juvenile-Justice/Pages/Pennsylvania-Youth-Survey-(PAYS).aspx); Pennridge School District, *Curriculum / Activities / Personnel / Policy Committee Meetings* (1:43:02) (Feb. 6,

and Intervention Support (EPIS) and the Pennsylvania Commission on Crime and Delinquency (PCCD). The purpose of the PAYS study is to obtain student feedback on potential dangers they are facing so that schools can more effectively judge their prevention policies and make data-informed corrections.¹⁷⁹ The survey allows school districts to receive detailed reports that can be used for grant writing, program, and school safety planning, along with interventions to meet a school's needs.¹⁸⁰ The data provided by the survey allows educators the ability to increase academic success while also reducing high-risk behaviors.¹⁸¹

The data from the 2019 PAYS showed that at least 15% of non-white students reported being bullied based on the color of their skin. District officials did not share this data publicly until the concerned parents of two Black children in the District requested it from administrators in June 2020.¹⁸² The Director of Pupil Services told the parents that this was not a concern for the District, as it was not a top five listed reason for students being bullied. During the debate over participation, sole dissenting board member Ron Wurz said, "Although [PAYS] asks difficult questions, it's better to ask them rather than just ignore the problems our children are facing...We should not be sticking our heads in the sand and hoping things get

2023) YOUTUBE

<https://www.youtube.com/live/jhZvKr8vjmk?si=yNBIAEOvm36yythU&t=6185>.

¹⁷⁹ Pennsylvania Youth Survey, PAYS Frequently Asked Questions, 3 (2023)

[https://www.pccd.pa.gov/Juvenile-](https://www.pccd.pa.gov/Juvenile-Justice/Documents/2023%20PAYS/PAYS%20Frequently%20Asked%20Questions%209-22-23.pdf)

[Justice/Documents/2023%20PAYS/PAYS%20Frequently%20Asked%20Questions%209-22-23.pdf](https://www.pccd.pa.gov/Juvenile-Justice/Documents/2023%20PAYS/PAYS%20Frequently%20Asked%20Questions%209-22-23.pdf) (last visited Nov. 7, 2023).

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Emails on file with author.

better.”¹⁸³ Without access to this data, the District lost another important tool to address and combat race- and gender-based harassment of students.

The Board also approved changes to their survey policy to limit participation in all future studies by requiring students to opt in. Policy 235.1 (previously policy 119¹⁸⁴) states that “[n]o 3rd party survey other than those formally adopted by the Board as part of the curriculum are to be distributed unless specific authorization is obtained from the building administrator, the Director of Curriculum, the Superintendent and the Board.”¹⁸⁵ In March 2023, the Pennridge School Board updated Policy 119 to include the word “surveys.” PSD recommended that the policy reflects a parental “opt in” versus “opt out” methodology for student participation, specifically in third-party surveys. Multiple economic studies have shown that “opt-in” regimes produce significantly less participation than “opt-out” regimes do.¹⁸⁶ Anti-government groups have pushed to change “opt-out” to “opt-in” for student surveys nationwide, specifically because it lowers participation.¹⁸⁷

I. Pennridge School District Passes Discriminatory Sports Policy

On October 24, 2023, the School Board passed a new sports policy requiring each sports team to be divided by sex and requiring students to enroll only in the

¹⁸³ John Worthington, *Pennridge school board discusses parental consent for student surveys*, THE REPORTER (March 1, 2023) <https://perma.cc/B8FN-HTWU>.

¹⁸⁴ Pennridge School District Policy Manual, *Policy 119 Controversial Issues/Surveys*, <https://perma.cc/62Y3-2W83> (last visited Nov. 7, 2023).

¹⁸⁵ Pennridge School District Policy Manual, *Policy 235.1 Surveys*, <https://perma.cc/8TYG-M7CS> (last visited Nov. 7, 2023).

¹⁸⁶ Jenny Stephens, *Pennridge School Board Puts PAYS Survey In Its Crosshairs*, BUCKS COUNTY BEACON (Apr. 3, 2023) <https://perma.cc/DMX5-KMNW>.

¹⁸⁷ *Id.*

team that aligns with their biological sex.¹⁸⁸ During public comment, parents criticized the Board for manufacturing a need for the policy, as there are not any current student-related complaints of the prior team sports policies.¹⁸⁹ There are no Pennsylvania laws prohibiting transgender students from participating in the sports team in line with their gender identity. Denying students the ability to participate in sports teams that align with their gender identity is a violation of Title IX and the PHRA.¹⁹⁰

VI. LEGAL ANALYSIS

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

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance, including federally funded school districts.¹⁹¹ A school district violates

¹⁸⁸ Maddie Hanna, *Pennridge passes athletics policy based on 'biological sex,' the most recent vote limiting transgender students*, PHILADELPHIA INQUIRER (Oct. 25, 2023) <https://perma.cc/GT7C-86NE>.

¹⁸⁹ *Id.*

¹⁹⁰ *See Soule by Stanescu v. Conn. Ass'n of Schs.*, No. 3:20-cv-00201, 2021 WL 1617206 at *10 (D. Conn. Apr. 25, 2021) (“Courts across the country have consistently held that Title IX requires schools to treat transgender students consistent with their gender identity. Every Court of Appeals to consider the issue has so held.”), *aff'd*, 57 F.4th 43, 56 (2d Cir. 2022) (“Although these cases from our sister circuits do not address the exact issue of participation of transgender athletes on gender specific sports teams, such authority nonetheless establishes that discrimination based on transgender status is generally prohibited under federal law....”).

¹⁹¹ 42 U.S.C. §§ 2000d, 2000d-4a.

Title VI if it creates, encourages, accepts, tolerates, exacerbates, or leaves unchecked a racially hostile environment that is severe and or pervasive such that it interferes with a student’s ability to participate in or benefit from the services, activities, or privileges that school district provides.¹⁹²

Like Title VI, Title IX prohibits sex- and gender-based discrimination in federally funded programs or activities, outlawing the same factors that contribute to a racially hostile environment, but doing so for sex- and gender-based harassment.¹⁹³

Under the “hostile environment” theory, a violation of Title VI or Title IX occurs if OCR determines that:

1. a third party (e.g., a fellow student) harasses a program participant or beneficiary (another student) based on race, color, or national origin, and the harassing conduct is sufficiently serious to deny or limit the individual’s ability to participate or benefit from the program or activity;

¹⁹² 42 U.S.C. §2000d. The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. *See also* Race, Color, or National Origin Discrimination: Frequently Asked Questions <https://perma.cc/JAX4-NXVH>.

¹⁹³ *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 639-44 (1999) (recognizing student-on-student harassment as constituting a hostile environment under Title IX when sufficiently severe and pervasive); *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 280-90 (1998) (recognizing teacher-on-student harassment as constituting a hostile environment under Title IX when sufficiently severe and pervasive); *Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022, 1032-35 (9th Cir. 1998) (finding plaintiffs sufficiently alleged a hostile environment under Title VI when student-on-student harassment was severe and pervasive).

2. the recipient knew or reasonably should have known about the alleged harassment (i.e., the recipient received actual or constructive notice); and
3. the recipient fails to take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and address its effects, as appropriate.

Under the first element, harassing conduct “may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the internet; or other conduct that may be physically threatening, harmful, or humiliating.”¹⁹⁴ Furthermore, the “harassment does not have to include an intent to harm, be directed at a specific target, or involve repeated incidents” to satisfy the first element so long as it limits “a student’s ability to participate in or benefit from the services, activities, were opportunities offered by a school.”¹⁹⁵ Here, [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] each experienced harassing conduct based on their race or sex.

Under the second element, “[a] school is responsible for addressing harassment incidents about which it knows or reasonably should have known.”¹⁹⁶ In some instances, “the obvious signs of the harassment are sufficient to put the school on

¹⁹⁴ U.S. Department of Education Office of Civil Rights, *Dear Colleague Letter*, Office of the Assistant Secretary, (Oct. 26, 2010) <https://perma.cc/M6QK-K5GR>.

¹⁹⁵ *Id.*

¹⁹⁶ A school has notice of harassment if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. For a discussion of what a “responsible employee” is, see U.S. DEPT OF EDUC. OFFICE OF CIV. RTS., *Sexual Harassment Guidance* (Jan. 19, 2001) <https://perma.cc/LSX9-4842>.

notice.”¹⁹⁷ These instances include harassment that occurred in “plain sight, [is] widespread, or [is] well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas.”¹⁹⁸ In other instances, “the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment.”¹⁹⁹ Importantly, in all instances, schools are required to have “well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.”²⁰⁰ Here, the school and the District are responsible for addressing the race- and sex-based harassment that [REDACTED] and [REDACTED] experienced because the relevant school and the District were specifically notified or on constructive about the incidents of harassment and the more general hostile environment. *See* allegations *supra* at 16-25, 27, 30, 33, 35, 38, 54.

Under the third element, “a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring,” regardless of whether the harassment is already covered by an anti-bullying policy.²⁰¹ “A school’s responsibility

¹⁹⁷ U.S. DEP’T OF EDUC. OFFICE OF CIV. RTS., *Dear Colleague Letter*, Office of the Assistant Secretary, (Oct. 26, 2010) <https://perma.cc/UCD3-WWZX>.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

is to eliminate the hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur.”²⁰² A school has failed to correct a hostile environment based on harassment of which it has actual or constructive notice by failing to take reasonable steps to eliminate it; the responsive action must be reasonable, timely, and effective.²⁰³

For example, in *Bryant v. Independent School District No. I-38 of Garvin County, Oklahoma*, the Tenth Circuit held that administrators “have a duty to provide a nondiscriminatory educational environment,” which means if they are “made aware of egregious forms of intentional discrimination and make the intentional choice to sit by and do nothing, they can be held liable...”²⁰⁴ There, the students filed a suit that included a claim that “the School District created and contributed to a racially hostile educational environment prior to the February 8, 2000, fight.”²⁰⁵ The students claimed that “the School allowed the presence of offensive racial slurs, epithets, swastikas, and the letters “KKK” inscribed in school furniture and in notes placed in African American students’ lockers and notebooks. Appellants further claim that “even though the School was aware of the hostile environment because of complaints by students and parents, it did nothing to remedy the situation” until it escalated to fights at school that resulted in student

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ 334 F.3d 928, 933 (10th Cir. 2003).

²⁰⁵ *Id.*

discipline.²⁰⁶ The court determined that the plaintiffs had established a colorable claim that the District was liable for failing to address a racially hostile environment.

Here, the District failed to take corrective action despite repeated instances of race- and sex-based harassment and widespread knowledge of the problems. The organizational and individual complainants repeatedly notified the District of various incidents of harassment. Despite actual and constructive notice, as well as acknowledgment of instances of discrimination, the District failed to take reasonable measures to ameliorate the hostile environment. Instead, the District adopted policies that exacerbated the hostile environment. For example, students have been forced to endure severe and pervasive harassment, and District officials have allowed conflicts over the use of racial slurs to evolve into fights at school without taking any action to prevent or resolve students' complaints.

School districts are also liable for actions and policy decisions that exacerbate a hostile environment. That means that banning books, restricting access to learning materials, or instituting other curriculum changes can also constitute a hostile environment.²⁰⁷ This is particularly relevant in cases in which the conduct of school

²⁰⁶ *Id.* at 931.

²⁰⁷ DEP'T OF EDUC. OFF. FOR CIV. RTS., U.S. DEPARTMENT OF EDUCATION TOOLKIT: CREATING INCLUSIVE AND NONDISCRIMINATORY SCHOOL ENVIRONMENTS FOR LGBTQI+ STUDENTS at 2, <https://perma.cc/V5UQ-JJSU> (explaining that book bans may violate Federal civil rights laws, depending on the facts where students have experienced a hostile environment at school based on sex, race or disability). *See, e.g.*, U.S. DEP'T OF EDUC., OFFICE OF CIV. RTS., Resolution Agreement Forsyth School District, OCR Complaint No. 04-22-1281, <https://perma.cc/8BFH-6G54> (recognizing that a violation of Title VI and Title IX may occur where a District received notice that its book screening process may have created a hostile environment for students, yet the District's responsive steps related to the book screening process were not designed to, and were insufficient to, ameliorate any resultant racially and sexually hostile environment).

officials is objectively or subjectively offensive, and their conduct is sufficiently severe or pervasive—or both severe and pervasive—such that it limits or denies the ability of a student to participate in or benefit from the services, activities, or opportunities offered by the school.²⁰⁸ Curricular content may also create a hostile environment if it promotes hateful or demeaning racial stereotypes or violence toward people of a particular race.²⁰⁹

B. Pennridge School District created, tolerated, exacerbated, and failed to ameliorate a hostile environment based on racial and gender-based harassment.

Students of color and LGBTQ+ students in the Pennridge School District have experienced, and continue to experience, a hostile environment due to the District's conduct. The District's ongoing conduct represents a pattern or practice of discrimination in violation of Title VI and Title IX. The organizational and individual complainants repeatedly notified the District of various incidents of harassment, elevating their concerns to teachers, administrators, and the Pennridge School District and School Board. Despite both actual and constructive notice of the ongoing and pervasive nature of race- and sex-based harassment, the District failed to implement remedial measures to address the hostile environment. Instead, as illustrated by the experiences of the individual complainants above, the District adopted policies that exacerbated the hostile environment for students of color and

²⁰⁸ DEP'T OF EDUC. OFF. FOR CIV. RTS., *Dear Colleague Letter: Race and School Programming*, at 9 (Aug. 24, 2023) <https://perma.cc/69VK-QD3Z>.

²⁰⁹ *Id.*

LGBTQ+ students, violating Title VI and Title IX. As illustrated by the experiences of the individual complainants above, not only has the District failed to design responses that sufficiently remedy PSD's hostile environment, the District has done the opposite by furthering the illegal harassment and hostile environment, in violation of federal civil rights law.

As detailed *supra*, there are multiple ways in which the District created and exacerbated a hostile learning environment and discriminated against students and teachers based on race and sex. Individual students and their parents shared examples with teachers, school administrators, and the School Board of racist and harmful conduct from classmates, including the use of racist slurs and open targeting of students based on their race. ■■■ and ■■■■ both Black and Latinx students, have faced harsh, exclusionary discipline and criminal sanctions from a fight that occurred when the District failed to address racial harassment. Despite actual knowledge of these discriminatory acts, the District has not taken adequate measures to eliminate or prevent the hostile environment. Due to the District's inaction, students have not been able to fully access public education programming and have looked to virtual schooling or leaving the District altogether.

Additional examples of how the District sustained a hostile environment and violated students' rights include the failure of the District to ensure easy access to bathrooms for students who identify as transgender, allowing teachers to misgender students, and adopting policies targeting students who are LGBTQ+ including policies that removed Pride flags and require students to obtain parental approval in

order to be called by their preferred name and pronouns, and in some cases outing students to their families. Student █████ explained how she heard threatening comments towards LGBTQ+ students in the hallways and even attempted to meet with an administrator about her concerns that the school was “outing” students to their families but was instead told by the administrator that those students were mentally ill. LGBTQ+ students felt targeted by these actions, and █████ felt so unsafe that she enrolled in virtual school for one year, demonstrating that her ability to access public education was limited by the hostile environment.

Moreover, by removing educational resources on DEI and removing curriculum components meant to educate students about discrimination and its history, the District has created an environment where race- and sex-based harassment can flourish. This harms students of color and students who identify as LGBTQ+. The District’s conduct regarding removing books from school libraries and limiting access to books targeted due to gender identity, sexual orientation, or racial identity despite the vocal objections of students and parents reflects the animus of the Board. These actions not only violate all students’ rights under the First Amendment²¹⁰ but create a hostile environment for LGBTQ+ students and students of color.²¹¹

²¹⁰ *See Board of Education, Island Trees Union Free School District No. 26 et al. v. Pico*, 457 U.S. 853, 872 (1982) (holding that the First Amendment requires students to remain free to inquire and the school library is the principal locus of such freedom, prohibiting school boards from removing books simply because they dislike the ideas contained in those books, they are racially controversial etc.).

²¹¹ *See e.g.*, U.S. Dep’t Of Educ., Office Of Civ. Rts., Resolution Agreement Forsyth School District, OCR Complaint No. 04-22-1281, <https://perma.cc/8BFH-6G54> (Through comments made at school board meetings, OCR found that the policy

Finally, the District’s new “advocacy” policies prevent students from identifying safe spaces to discuss harassment they may be facing. The Board’s decision to ban the PAYS study is an attempt at willful ignorance. By blocking the PAYS study that reports students’ experiences with sex- and race-based harassment, the District has implemented policies that make it harder for students to actually or constructively notify school officials of the hostile environment within the school. To date, the District has doubled down on its willful disregard of its duty to address the hostile environment that many protected underserved students face, ignoring students’ and parents’ repeated requests that they too should be able to access and participate in a “safe, welcoming, [and] nurturing” environment as envisioned by PSD’s mission statement.

VII. REMEDY & PRAYER FOR RELIEF

The Complainants seek the following remedies to address the ongoing racially and gender-based hostile environment in Pennridge, which violates both Title VI and Title IX and has resulted in significant harm and educational losses to impacted students.

To remedy the systemic violations, Complainants ask that OCR issue findings and corrective action directing the District to:

- 1) Mandate that all School Board members and District staff receive racial bias and cultural competency training.

had an underlying motivation of targeting books due to gender identity, sexual orientation, or racial identity, and therefore created a hostile environment for students of certain racial and gender identities in the schools.)

- 2) Create an internal annual survey for all students, parents, and staff to gather data on how all parties experience or observe bullying and harassment and are impacted by school policies, with a focus on race and sex-based harms.
- 3) Establish a stakeholder equity team comprised of teachers, administrators, counselors, District administrators, special education staff or administrators, members of community organizations, as well as students and parents/guardians, with the mission of examining the root cause of racial and LGBTQ+ based discrimination students face. This team must include students of color and students who identify as LGBTQ+ who wish to participate.
 - a) The team will meet at least four times a year.
- 4) Retain or designate consultants with expertise on remedying disparate educational outcomes and mistreatment of students of color and students who identify as LGBTQ+.
 - a) Any experts should be approved by the stakeholder equity team.
- 5) Create a District-wide DEI position, headed by a non-school board member.
 - a) Distribute contact information for the DEI office to all students and maintain the information in accessible areas in the school, such as bulletin boards and counseling offices.
 - b) Create a system for students to report harassment on the basis of race or LGBTQ+ status and create standard procedures for elevating complaints, registering them in a district-wide database, and developing

and implementing procedures to effectively address and remedy the complaints.

- 6) Require the School Board to make available diverse, culturally responsive learning materials and to ensure that the curriculum does not exclude students based on race or sex or further demeaning stereotypes.
- 7) Require Pennridge to evaluate and make available banned books that were improperly removed without following proper procedures and targeted to remove and limit access to books concerning the lived experiences of people of color and those who identify as LGBTQ+.
 - a) Direct the District to create and follow a legally compliant publicly available book review policy and process prior to the removal of library books.
 - b) Require bi-annual reports on the changes to books allowed in schools; provide the opportunity for public comment before any book changes are finalized.
- 8) Require the School Board to give community members the opportunity to engage in public comment at school board meetings without discrimination or retaliation.

To remedy the racially hostile environment:

- 1) Create a stakeholder team comprised of teachers, administrators, counselors, students, parents/guardians, and community organizations to investigate and report on the root causes of disparate discipline patterns in the District.

- 2) Create new guidelines and revise the Code of Conduct to expressly prohibit the use of racial slurs and other racially discriminatory behavior and apply appropriate discipline utilizing restorative justice practices for students. These revisions should include reviewing and eliminating rules and policies that are subjective and racially biased.
 - a. Create annual trainings for teachers and staff on discipline policies and preventing disparate outcomes.
 - b. Require the school to clear the school records of students who received summary citations for incidents related to racial harassment.
 - c. Require the school to make a public report on all use of summary citations in the District, without revealing personally identifiable information of students.
- 3) Retain an expert to create age-appropriate guidance and training for K-12 students explaining the harm caused by anti-Black racism, including but not limited to the use of racial slurs.
- 4) Engage an expert to provide mandatory training to all school personnel on racial harassment, how to identify it, interrupt it, investigate and report it so that all teachers and staff can recognize harassment and know how to respond.
- 5) Require the school to have a clear and publicly available policy for investigating and responding to racial harassment, including mechanisms to ensure that students who report experiencing or witnessing harassment are not retaliated against.

- a. Require the District to maintain data on the number of complaints received and investigated, and the percentage of cases where the District finds claims of harassment to have been substantiated and how it responded.
- 6) Eliminate the discriminatory use of summary citations and take measures to ensure the retroactive expungement of any previously issued discriminatory summary citations.

To Remedy the Hostile Environment for Title IX Violations:

- 1) Order Pennridge to rescind all policies that violate the DOE's recommended measures for supporting LGBTQ+ students.²¹² This includes but is not limited to:
 - a) removing policies that require counselors and teachers to out LGBTQ+ students to their parents or peers,
 - b) removing policies requiring teachers to deadname students or use incorrect pronouns,
 - c) removing policies that enforce a gender binary and prevent students from exploring their gender and sexual identity.
- 2) Require PSD to rescind Policy 720 and make bathrooms easily accessible to students and staff during all periods when the school is open and being used.

²¹² Dep't of Educ. Off. for Civ. Rts., *Supporting Transgender Youth in School* (June 2021) <https://perma.cc/5RZX-XQ9J>.

- a) In addition to allowing students and staff to use the bathroom that corresponds to their gender, the school must make multi-user gender-neutral bathrooms available in each building in the District.
- 3) Require annual training for teachers and staff on inclusivity measures for LGBTQ+ students.
- 4) Require PSD to make available LGBTQ+ resources, including books discussing gender and sexuality.
- 5) Adopt policies or model plans to guide school staff on how to support LGBTQ+ students and communicate with families, such as developmentally appropriate protocols to support students in any transition process, and a checklist of issues to discuss with the student or their family, including the use of preferred pronouns.
- 6) Facilitate opportunities for students to find support with peers, teachers, faculty, and staff, such as student-led organizations, and identifying safe spaces on campus.

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