

**INTERNAL INVESTIGATION REPORT
AS REQUESTED BY THE
CENTRAL BUCKS SCHOOL DISTRICT**

April 20, 2023

William M. McSwain
Michael J. Rinaldi
Mary P. Hansen
DUANE MORRIS LLP
30 South Seventeenth Street
Philadelphia, Pennsylvania, 19103
(215) 979-1000 (telephone)
(215) 979-1020 (facsimile)

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	1
BACKGROUND	16
I. The Central Bucks School District Is the Fourth Largest School District in Pennsylvania, Serving Approximately 18,000 Students Across 23 Schools.....	16
II. The School District Has Adopted Policies Prohibiting Bullying, Discrimination, and Harassment, Including Based on Sex and Other Legally Protected Statuses.....	19
III. In the Fall of 2022, the School District Received Four Complaint Letters from OCR.	25
A. OCR Rejected Mr. Burgess’s First Complaint about Alleged Bullying of Student 1.....	25
B. The School District Has Not Heard from the U.S. Department of Justice about This Matter.	29
C. OCR Launches Four Investigations Targeting the School District, Which Were Commenced at the Behest of Activists....	32
IV. The School District Commissioned This Independent Investigation to Investigate the Allegations in the Four OCR Complaints.....	34
FACTUAL FINDINGS	35
I. The School District Was Justified in Suspending Andrew Burgess.	35
A. Mr. Burgess Was Suspended with Pay from May to August 2022.....	35
B. Over the Course of Weeks, Mr. Burgess Obtained Information from Student 1 about Purported Bullying and Concealed It from the Administration.	38
C. OCR’s Complaint, Alleging Improper “Retaliation” Against Mr. Burgess, Lacks Any Factual Basis.....	68

II.	Lenape Middle School Administrators Did Not Engage in Impermissible Discrimination or Retaliation by Not Allowing LGBTQ Students Who Had Walked Out of School to Come and Go As They Pleas	70
A.	Following the School District’s Decision to Suspend Mr. Burgess with Pay, a Prolonged Protest Ensued at Lenape Middle School.	70
B.	Mr. Burgess Colluded with ACLU Client Marlene Pray in Support of the Protests.	75
C.	The School District’s Response to the Walk-Out Was Appropriate and Did Not Constitute Improper Discrimination or Retaliation.	80
D.	The Walk-Out Allegations of Discrimination and Retaliation Are Without Basis.	84
III.	The School District Responded Appropriately to Any Alleged Bullying or Harassment of Students Based on Their Sexual Orientation or Gender Identity	85
A.	The ACLU’s Complaint Is Light on Specifics.	85
B.	Our Investigation Has Found That the ACLU’s Allegations Are Unsupported by the Evidence.	90
C.	LGBTQ-Focused Student Groups at Each of the School District’s Middle and High Schools Offer LGBTQ Students and Others Space to Connect and to Succeed.	97
D.	School Building Principals and Other Staff Respond Appropriately to Allegations of Bullying or Harassment of LGBTQ Students, Although Many Principals Have Not Received Any Such Allegations.	98
E.	Our Investigation Did Not Substantiate Generalized Concerns about the Lenape Administration’s Response to Alleged LGBTQ Harassment or Bullying, Which Lacked Specificity and Were Contradicted by Other Evidence Discovered During our Investigation.	114
F.	The ACLU’s Claims about CB Cares Educational Foundation Are Unfounded.	120

IV.	The School District’s Policies Are Lawful and Reasonable.	124
A.	Policy 321 Is Viewpoint Neutral, Reasonable, and the Legitimate Decision of a Majority of Duly-Elected School Board Members.....	128
B.	The District’s Policy for Name and Pronoun Change Requests Is Supported by Law and Legitimate Pedagogical Interests.	134
C.	The School Board Acted Reasonably in Adopting Board Policies Regarding the Age-Appropriateness of Books and Other Materials.....	139
D.	The School District’s Approach to Sexuality Classes Is Reasonable and Reflects Ongoing Evaluation to Meet Student Needs.....	144
	CONCLUSION AND RECOMMENDATIONS	146

EXECUTIVE SUMMARY

The Central Bucks School District (“School District” or “District”) engaged Duane Morris LLP (“Duane Morris”) to investigate allegations that:

- The School District improperly suspended Andrew Burgess, a middle school teacher in the School District, in retaliation for his having filed a complaint with the U.S. Department of Education’s Office for Civil Rights (“OCR”) and for having provided a transgender student’s mother with information about OCR (the “*Burgess Retaliation Allegations*”).
- The School District engaged in sex discrimination and retaliation by allegedly not permitting LGBTQ students at Lenape Middle School who engaged in “walk-outs” in May 2022—to protest Mr. Burgess’s May 6, 2022, suspension—to reenter the school building after they had walked out (the “*Walk-Out Allegations*”).
- The School District failed to respond appropriately to bullying and harassment of students based on their sexual orientation or gender identity (the “*Bullying Allegations*”).
- The School District discriminated against employees and students on the basis of sex as a result of certain policies adopted by the School District. At issue are School District policies (i) prohibiting teacher advocacy on partisan, political, and social policy issues and requiring neutrality in the classroom; (ii) requiring parent or guardian permission for student name changes; (iii) mandating age-appropriateness for library books and classroom materials; and (iv) providing that the once-a-year elementary school Human Growth and Development Class be conducted in separate sessions for boys and girls (the “*Policy Allegations*”).

These allegations are contained in a heavily redacted—and highly publicized—complaint by the American Civil Liberties Union of Pennsylvania (“ACLU”), which was posted to the ACLU’s Web site, and in four complaint letters

sent to the School District by OCR dated September 21, 2022 (concerning the Burgess Retaliation Allegations), September 23, 2022 (concerning the Policy Allegations), October 20, 2022 (concerning the Bullying Allegations), and December 12, 2022 (concerning the Walk-Out Allegations).

The School District retained Duane Morris, as outside legal counsel, to investigate these matters on behalf of the District because it takes the allegations very seriously, as the District believes that students are entitled to an education, and employees are entitled to a workplace, free of harassment and bullying. When harassment or bullying occurs, administrators and teachers, per District policy, are required to take prompt and effective action. Besides being prohibited by law, it is the belief of the District that unaddressed harassment and bullying degrade the educational experience.

In requesting this investigation, the Board of School Directors announced that it was committed to getting to the bottom of these allegations, remedying any harassment, bullying, and unlawful discrimination that was uncovered, and ensuring that the School District's educational environment is one in which students are empowered to reach their highest potential, unencumbered by bias or discrimination. In conducting this investigation, Duane Morris operated independently. Neither the Board of School Directors nor the Superintendent directed our investigation or made any witness or documents "off limits." The School District administration cooperated fully with the investigation, promptly providing access to witnesses and documentary evidence. During the course of the

investigation, we interviewed 45 witnesses—including witnesses from every one of the District’s 23 schools—and reviewed over 123,000 pages of documents, as well as voluminous electronic records. Our interviews covered a wide range of people, including community members, guidance counselors, teachers, and moderators of LGBTQ-focused school clubs. We also reached out to many LGBTQ students (and their families).

As to the *Burgess Retaliation Allegations*, the School District informed Mr. Burgess, by letter dated May 6, 2022, that he was suspended with pay. The reasons stated in the letter for the suspension were that Mr. Burgess (i) failed to report to the Lenape Middle School administration the alleged bullying of a transgender student (who will be referred to in this report as “Student 1”), (ii) directed Student 1 and his mother not to report the alleged bullying to the school administration, and (iii) otherwise interfered with the operations of the school.

Based on our investigation, we conclude that Mr. Burgess was suspended for the reasons stated in the School District’s May 6, 2022, letter and not because he filed an OCR complaint or because he provided information to Student 1’s mother about OCR. In fact, until this independent investigation, the School District was not even aware that Mr. Burgess had filed the OCR complaint relating to Student 1. We further find that Mr. Burgess’s suspension was justified. Moreover, based on new information developed during this investigation—including that he similarly manipulated a second student (who will be referred to as “Student 2”) and failed to

report allegations of anti-LGBTQ bullying made by three District parents—we recommend that the School District suspend Mr. Burgess without pay.

During our investigation, we found that, in the spring of 2022, Mr. Burgess failed to report allegations by Student 1, who was then a student at Lenape Middle School, that Student 1 had been physically assaulted, threatened, and subjected to a variety of slurs. Instead, Mr. Burgess directed Student 1 to report these allegations only to him, and not to others in the School District, including guidance counselors or administrators. Mr. Burgess convinced Student 1 that guidance counselors and administrators at Lenape would not help Student 1, and that only he would help Student 1. On or about March 3, 2022, Mr. Burgess created a four-page dossier, cataloguing, in graphic detail, the alleged physical assaults, slurs, and threats Student 1 had reported to him. According to the dossier, this alleged harassment of Student 1 occurred over the course of months during late 2021 and early 2022, was perpetrated by about a dozen of Student 1's fellow Lenape students, and some of it was ongoing, supposedly occurring multiple times a week.

Rather than reporting this alleged harassment of Student 1 to the principal of Lenape Middle School, as he was required to do, Mr. Burgess actively concealed it from the School District administration. He used the information in the dossier to file a complaint with OCR in the spring of 2022, purportedly on Student 1's behalf. During an interview under oath, conducted as part of this investigation, Mr. Burgess told us that he provided a copy of the dossier to Zachary J. Marshall, an attorney at OCR's Philadelphia Office. Mr. Burgess also told us that he informed

Mr. Marshall that he had concealed the dossier and the allegations contained in it from the School District administration.

Based on our investigation, we have concluded that Mr. Burgess had an ulterior motive for taking these actions. In December 2021, a newly elected six-to-three Republican majority on the School Board took office, following the November 2021 Municipal Election. Shortly after this new School Board was inaugurated, the Board began considering the adoption of policies—including ones concerning the age-appropriateness of library books and classroom materials—with which Mr. Burgess disagreed. In addition to being a Lenape teacher, Mr. Burgess was also a Vice President of the Central Bucks Education Association, the labor union representing teachers in the District. To express his disapproval of the new policies, Mr. Burgess used his union position to attempt to interfere with communications between Geanine Saullo, the principal at Lenape, and teachers at Lenape regarding the appropriateness of certain books in their classroom libraries.

Mr. Burgess's initial efforts to derail policies that he disliked could only do so much. Mrs. Saullo was able to communicate with the teaching staff, and the Board, having considered the issue, adopted policies on the age-appropriateness of library and classroom materials, including ones prohibiting visual depictions of sex acts, with final approval in the summer of 2022. Also during this time period, the School District considered, adopted, or formalized other policies, including those requiring parent or guardian consent for student name or gender pronoun changes and prohibiting teachers from engaging in advocacy activities in their classrooms.

The evidence and circumstances suggest that Mr. Burgess believed that, if he brought to light supposed widespread unaddressed bullying and harassment of LGBTQ students and convinced a federal agency to investigate such matters, the School Board would cave to the inevitable criticism and bad press—particularly if Mr. Burgess, aided by the press, could convince the public that the School District’s new policies were the actual cause of such bullying and harassment.

There was a flaw in this plan, however: there was no such epidemic of anti-LGBTQ bullying and harassment at Lenape Middle School or in District schools more generally. During his interview under oath as part of this investigation, Mr. Burgess could not identify a single instance of reported and unaddressed bullying, discrimination, or harassment of an LGBTQ student anywhere in the School District at any time. This was a consistent refrain during our investigation, where witness after witness told us that they were unaware of any specific instances of reported and unaddressed bullying or harassment of LGBTQ students.

Furthermore, during his interview, Mr. Burgess confirmed that he could not say one way or the other whether a hostile environment presently existed at any of the District’s 23 schools.

In the spring of 2022, Mrs. Saullo learned that Mr. Burgess had failed to report alleged bullying of Student 1, even as she and other administrators were unaware of the full scope of the dossier (which Mr. Burgess had concealed from them, and which was only discovered through Duane Morris’s investigation) or the fact that Mr. Burgess had similarly manipulated Student 2 and had failed to report

allegations made by three District parents. Based on what the School District knew at the time regarding Mr. Burgess’s concealment of alleged bullying of Student 1, the School District suspended him with pay. The school administration also promptly engaged with, and marshalled support for, Student 1. When Mrs. Saullo became aware of Student 1’s mother’s concerns for her child in March 2022, Mrs. Saullo immediately communicated with her and attempted to address her concerns, including by directing Student 1’s guidance counselor to schedule multiple sessions with him in March 2022. In other words, the School District responded the way one would hope it would—it supported a vulnerable student, and it suspended a teacher who had covered up alleged bullying.

For its part, OCR—despite having Mr. Burgess’s complaint about the purported bullying of Student 1, along with a copy of Mr. Burgess’s dossier—failed to report the information to the School District, which would have been in a position to investigate the allegations and to protect Student 1. OCR also rejected Mr. Burgess’s complaint about the alleged bullying of Student 1. Mr. Burgess then filed another complaint with OCR. This new complaint alleged that the School District “retaliated” against him by suspending him. OCR decided to pursue that new “retaliation complaint,” launching a now seven months–long federal investigation into the matter. Our investigation has concluded that the *Burgess Retaliation Allegations* are factually and legally baseless.

Moreover, our investigation has revealed that OCR’s investigation is of dubious origin. We discovered that shortly before OCR rejected Mr. Burgess’s

complaint about Student 1 but opened the “retaliation” investigation, a member of the Central Bucks Board of School Directors, Karen Smith, wrote an e-mail message directed to U.S. Secretary of Education Miguel Cardona and OCR Head Catherine Lhamon. In her e-mail, Ms. Smith complained that she had been outvoted by the Board’s Republican majority on several policy issues that she claimed affected LGBTQ students. Ms. Smith is one of three Democrats on the nine-member School Board. Ms. Smith falsely stated that the School District had “suspend[ed] an exemplary teacher for protecting a transgender student.” She further urged OCR to join in her “fight[]” against the Board’s Republican majority.

Having received Ms. Smith’s e-mail, OCR—headed by Ms. Lhamon, a political appointee of the current Presidential Administration—launched four separate federal investigations against the School District. In doing so, OCR ignored the fact that Mr. Burgess had covered up the alleged abuse of Student 1.

Mr. Burgess and other opponents of the new policies found an additional way to disrupt the School District’s operations by organizing and supporting “walk-out” protests at Lenape Middle School to oppose his suspension. While the School District, for employee confidentiality reasons, did not disclose the details of why Mr. Burgess had been suspended, activists put forth the false narrative that Mr. Burgess had been suspended for protecting a transgender student—the same false narrative Ms. Smith provided to OCR. The walk-outs continued for four days, from May 10 to 13, under the banner “Justice for Burgess,” and caused major disruption to Lenape’s operations. Mrs. Saullo received death threats and a multitude of vile

and profane e-mail messages and telephone calls. Outside protestors descended upon the school, necessitating police intervention. Outside activists, including Marlene Pray, who is an ACLU client in this matter, explicitly called for this weeklong protest in order to “bring back Mr. Burgess.”

OCR launched another federal investigation against the School District, claiming that it had engaged in “discrimination” and “retaliation” by not allowing LGBTQ students who had engaged in the May 2022 “Justice for Burgess” walk-outs to reenter the school building. These *Walk-Out Allegations* are factually and legally baseless. Students were allowed to reenter Lenape even after walking out, provided they came to the secure front door of the school building. We explained to OCR—in letters dated January 20 and February 15, 2023—that the School District could not allow, for obvious school safety reasons, students to come and go through whatever door they chose. OCR has not responded but, instead, has continued to press its investigation. OCR has served on the School District document requests consisting of 26 separate requests and subparts, covering all areas of school operations going back several years—all over a complaint that the School District did not give carte blanche to students who had walked out of school.

The ACLU, whose client, Ms. Pray, had instigated the walk-outs, also filed its complaint with OCR, containing the *Bullying Allegations*, which OCR promptly opened as yet another federal investigation. Because the School District takes any such allegations seriously, it sought to investigate them, so that any affected students could be protected and the District could get to the bottom of any

wrongdoing. But then all of these actors began to interfere with the ability of the School District to investigate the allegations. Ms. Smith (joined by two other School Board members) voted against commissioning this independent investigation, citing the cost of defending the District in the OCR investigations—investigations that Ms. Smith had, in fact, instigated. The ACLU refused to provide the School District with an unredacted version of its complaint or to identify the students who had allegedly been bullied. Similarly, OCR refused a request by Duane Morris for the identities of the alleged victims, so that the School District could protect and assist those students and get to the bottom of any wrongdoing. In declining Duane Morris’s request, Catherine C. Deneke, Mr. Marshall’s supervisor at OCR, stated that the individual students and the discrimination they allegedly suffered were “irrelevant” to OCR’s investigations.

Our investigation has revealed why OCR, the ACLU, and certain members of the School Board so vigorously stood in the way of a full, independent investigation of the facts. It was because there is no evidence to support the allegations that the School District is awash in anti-LGBTQ bullying, harassment, or discrimination or that the School District has allowed such behavior to persist. The School District has a well-designed, well-staffed, and well-functioning Title IX compliance program. In addition to the formal Title IX system, we found that teachers, guidance counselors, and administrators addressed specific allegations of bullying or harassment promptly, and often took extraordinary steps to identify students who had committed any such misconduct and to support the students who were bullied

or harassed. We were consistently impressed by the quality of the teachers, guidance counselors, and administrators we interviewed, and the professionalism with which they approached their jobs and the genuine care and concern they showed for the students entrusted to their care.

In addition, OCR opened a fourth investigation, targeting policies that the duly-elected School Board adopted, but about which Ms. Smith complained in her e-mail to Secretary Cardona and OCR Head Lhamon. This investigation, about the ***Policy Allegations***, is also baseless. At bottom, Mr. Burgess, the ACLU, Ms. Pray, OCR, Ms. Smith, and other activists have policy disagreements with the School District. They do not agree with policies that require classrooms to be politically neutral; they prefer classrooms where teachers are free to push ideology (or at least one particular ideology) on students. They do not agree with policies that require parent or guardian consent to change a student's name or gender pronouns; they prefer a situation where children can be socially transitioned and renamed behind their parents' backs, or even against their parents' wishes. They oppose policies setting age-appropriateness requirements for books depicting sex acts; they believe such books (or at least those with an "LGBTQ theme") should be allowed without restriction or oversight by those charged under Pennsylvania law with making such judgments, the Superintendent and the duly-elected Board of School Directors. They do not believe elementary school human sexuality classes should be separated by sex, even though the practice is longstanding in the District and elsewhere, supported by decades of educational experience, and permitted by federal law.

In a democracy, these are matters for the people’s elected representatives (or, in some cases, a matter of parents’ rights). But, having lost the November 2021 School Board election, the new minority attempted to weaponize federal investigatory resources to achieve their aims. In doing so, they exhibited a regrettable callousness. Mr. Burgess covered up alleged abuse and thereby endangered a vulnerable child. OCR, despite knowing of the alleged abuse of Student 1, failed to report it to school authorities and effectively participated in Mr. Burgess’s cover-up—and then launched a federal investigation based on an allegation that the School District “retaliated” against Mr. Burgess, even though OCR knew that the District was justified in suspending him (because Mr. Burgess had told OCR that he had concealed the alleged abuse from the District). Ms. Smith even called Mr. Burgess “an exemplary teacher,” in order to advance her “fight.” They disrupted the educational environment at Lenape for a week and manipulated children into walking out of school, all in support of a teacher who endangered a transgender student. They tried to sully the reputations of educators and administrators who have dedicated their careers to serving the children of this community. And they caused the School District to divert scarce resources—both financial and the time and attention of District personnel—to addressing OCR’s baseless investigations.

When the minority refuses to accept the results of an election, and instead weaponizes federal investigatory resources to achieve what it could not achieve at the ballot box, it weakens the democratic process and sows distrust. Stated simply,

the OCR complaints are a waste of federal investigatory resources and a significant distraction to the work that needs to be done to support the nearly 18,000 students educated in the Commonwealth’s fourth largest public school district.

Indeed, in advancing the Policy Allegations, the ACLU, Ms. Smith, and others tacitly concede the weakness of the Burgess Retaliation Allegations and the Bullying Allegations. Had the School District improperly retaliated against Mr. Burgess or acted indifferently to student bullying, those allegations could stand on their own. Instead, the complainants have intentionally conflated discrimination, harassment, and bullying on the basis of sex with the adoption of policies with which they disagree. But the policies at issue are neutral on their face and in application and are in accord with governing law. The complainants have not shown any linkage between the policies and actual discrimination, harassment, or bullying, nor could they. They are simply dressing up a policy dispute as an issue of “discrimination.”

* * * * *

We conclude as follows:

1. ***The Burgess Retaliation Allegations.*** The School District did not engage in impermissible retaliation against Mr. Burgess. Rather, his suspension was justified. Further, based on additional facts obtained through this investigation—including the dossier he created regarding Student 1 and that he similarly manipulated a second student and failed to report other allegations of bullying and harassment—we recommend that the School District suspend Mr.

Burgess without pay. By his conduct, Mr. Burgess has demonstrated that he currently should not be entrusted with the care or education of children. We also find troubling the participation of OCR employees in Mr. Burgess's conduct. Upon learning of allegations of abuse that had not been reported to the School District administration, OCR should have immediately contacted the School District administration with the information contained in the dossier.

2. ***The Walk-Out Allegations.*** The administration of Lenape Middle School acted appropriately in denying students who had participated in the May 2022 walk-outs the ability to come and go through any building door they chose. Lenape Middle School employs a modern building entry system, complete with electronic locks and an intercom system. Such security measures are an unfortunate consequence of school shootings and other violence around the country. Particularly at a time of tension, including when the school's principal is being subjected to death threats, the Lenape administration acted appropriately in maintaining well-established school safety protocols, none of which constitutes illegal discrimination or retaliation.

3. ***The Bullying Allegations.*** Not unlike most (or all) school districts, some bullying occurs in the Central Bucks School District. We found, however, that such incidents are not widespread and that they were promptly addressed by School District personnel. Moreover, very little of any alleged bullying targets LGBTQ students, a fact confirmed by all of the data we collected and interviews we conducted, including the interview under oath of Mr. Burgess. The School District

has well-designed and well-implemented formal and informal processes to address alleged bullying, all of which is in compliance with Pennsylvania and federal law.

4. ***The Policy Allegations.*** None of the policies adopted by the School District referenced in the September 23, 2022, OCR complaint letter is, on its face or in actual operation, discriminatory against LGBTQ students or employees. Rather, these are reasonable policy choices, made by the Superintendent and the Board of School Directors, who are empowered by state law to make such decisions, and supported by well-established legal precedents.

BACKGROUND

I. The Central Bucks School District Is the Fourth Largest School District in Pennsylvania, Serving Approximately 18,000 Students Across 23 Schools.

Pursuant to the Pennsylvania Public School Code of 1949, as amended, the Pennsylvania General Assembly has divided the Commonwealth into 500 school districts, through which primary and secondary public education is provided to students. In most of these, the school district is governed by an elected, nine-member board of school directors, elected at-large, from multi-member regions, or from single-member regions. The board of school directors appoints a superintendent, who is charged by law with supervising the provision of educational services in the various schools of the school district. The superintendent is also an *ex officio* member of the board of school directors, with the right to speak on matters before the board, but having no vote.

The Central Bucks School District operates in accord with Pennsylvania law. It has a nine-member Board of School Directors, elected from single-member regions, with the following current membership:

- Dana Hunter, President (Region II);
- Leigh Vlasblom, Vice President (Region III);
- Karen Smith (Region I);
- Lisa Sciscio (Region IV);
- Mariam Mahmud (Region V);
- Sharon Collopy (Region VI);
- Debra T. Cannon (Region VII);
- Tabitha Dell'Angelo (Region VIII); and
- Jim Pepper (Region IX).

In addition, the Board has several non-voting, *ex officio* members, specifically Superintendent Abram Lucabaugh, Ed.D., Treasurer Tara B.G. Houser, and Secretary Stephanie Radcliffe.

The Central Bucks School District is very large by Pennsylvania standards. Although some school districts in the state have only a couple hundred students in a single school building (or, in the case of one school district, no public schools at all), the Central Bucks School District has 17,475 students (based on District data from October 2022), and trails only the Philadelphia, Pittsburgh, and Reading school districts in terms of total enrollment. The School District has 23 schools, including three high schools, five middle schools, and 15 elementary schools:

High Schools:

- Central Bucks East;
- Central Bucks South; and
- Central Bucks West.

Middle Schools:

- Holicong;
- Lenape;
- Tamanend;
- Tohickon; and
- Unami.

Elementary Schools:

- Barclay;
- Bridge Valley;
- Buckingham;
- Cold Spring;
- Doyle;
- Gayman;
- Groveland;
- Jamison;

- Kutz;
- Linden;
- Mill Creek;
- Pine Run;
- Simon Butler;
- Titus; and
- Warwick.

The schools are structured such that kindergarten through grade six attend the elementary schools, grades seven through nine attend the middle schools, and grades ten through twelve attend the high schools. On average, there are about 600 students in each of the elementary schools, 900 in each of the middle schools, and 1,500 in each of the high schools.

The Central Bucks School District is also geographically large, covering more than 120 square miles across nine municipalities in Bucks County.¹ According to the latest U.S. Census data, 120,895 people live in the School District. The School District includes towns with significant commercial activity (such as the Borough of Doylestown, which is the county seat), as well as more rural areas. The School District's current annual budget is approximately \$364 million.

Due in part to its size, the School District has a sophisticated administrative structure. In addition to the Superintendent, there are two assistant superintendents (one for elementary education and one for secondary education) and a principal at each school, plus an assistant principal at each middle school and

¹ These are the boroughs of Chalfont, Doylestown, and New Britain and the townships of Buckingham, Doylestown, New Britain, Plumstead, Warrington, and Warwick. Under Pennsylvania law, the School District is separate from and independent of the municipal governments.

three “house principals” at each high school (one for each of the three grades). The School District also employs administrators at its central offices to oversee various functions, including finance, operations, human resources, and transportation.

II. The School District Has Adopted Policies Prohibiting Bullying, Discrimination, and Harassment, Including Based on Sex and Other Legally Protected Statuses.

The School District is governed under various policies, adopted at either the District level or for an individual school building. Some of these take the form of formal “Board Policies,” which are adopted by the Board of School Directors after readings at two separate public meetings, following notice and an opportunity for public comment at each meeting. Board Policies are maintained in the School District’s “Policy Manual” and are also available online, through the District’s Web site. *See Board Policy 007: Policy Manual Access* [Ex. 1].² The School District administration, under the direction of the Superintendent, may also promulgate “administrative regulations,” to carry out and implement the Board Policies. *See Board Policy 000: Board Policy/Procedure/Administrative Regulations* [Ex. 2]. “Administrative regulations may not conflict with Board policy or with applicable law.” *Id.* Other policies adopted less formally are contained in, for example, student handbooks (either the districtwide student handbook or for an individual school), and these, too, are available on the District’s Web site. In all instances,

² Copies of Board Policies are available at <http://www.cbsd.org/policies>. Unless otherwise noted, all Web sites cited in this report were last visited on April 17, 2023, and are current as of that date. Bracketed references to “Ex. ___” are to the exhibits to this report.

Board Policies control and supersede student handbooks and other informal procedures.

Among the Policies adopted by the Board of School Directors is Board Policy 104, which provides in part:

The district is committed to the maintenance of a safe, positive learning environment for all students that is free from discrimination by providing all students course offerings, counseling, assistance, services, employment, athletics and extracurricular activities without any form of discrimination, including Title IX sexual harassment. Discrimination is inconsistent with the rights of students and the educational and programmatic goals of the district and is prohibited at or, in the course of, district-sponsored programs or activities, including transportation to or from school or school-sponsored activities.

Board Policy 104: Discrimination/Title IX Sexual Harassment Affecting Students, Staff, and Third Parties [hereinafter, “Board Policy 104”] [Ex. 3].³ Board Policy 104 goes on to define “discrimination” as “treat[ing] individuals differently, or to harass or victimize based on a protected classification including race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy, or handicap/disability.” *Id.* According to Board Policy 104, “[a] school employee who suspects or is notified that a student has been subject to conduct that constitutes a violation of this policy shall immediately report the incident to the building principal, as well as properly making any mandatory police or child

³ “Title IX” refers to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* The statute provides, subject to certain exceptions, that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

protective services reports required by law.” The Policy also encourages others, including students and third parties, to make such reports to the building principal.

In addition, the Board has adopted a Student Discipline Policy, which includes the “Disciplinary Procedures & Responsibilities” for the School District. *See Board Policy 218: Student Discipline* [hereinafter, “Board Policy 218”] [Ex. 4]. Board Policy 218 provides for four levels for offenses, from Level I (the least serious) to Level IV (the most serious). Among other things, the Policy prohibits “Bullying” and “Repeated Bullying behavior.” *Id.* “Bullying” is classified as either a “Level I” or “Level II” offense, depending on its severity, but even for Level I offenses “[r]epeated misbehavior requires a parent/teacher conference” and a “conference with the counselor and/or administrator.” *Id.* Level II offenses require a referral to an administrator. *See id.* Further, for all offense levels, staff members or administrators are required to maintain a proper and accurate record of the offense and disciplinary action. *See id.*⁴

Notably, Board Policy 218 categorizes “Repeated Bullying behavior” as a Level III offense, which mandates the following procedure:

The administrator indicates disciplinary action by investigating the infraction and conferring with staff on the extent of the consequences. The administrator meets with the student and confers with the parent about the student’s misconduct and the resulting disciplinary action. A proper and accurate record of offenses and disciplinary action is maintained by the administrator.

⁴ For Level IV offenses, this record is required to be submitted to the Superintendent.

Disciplinary consequences for Level III offenses include Saturday detention, temporary removal from class, and suspension from school. *See id.* Continuation of unmodified Level III conduct triggers Level IV procedures and consequences, including a mandatory suspension for up to ten days and even expulsion. *See id.*

The Board of School Directors has also adopted Board Policy 249, which specifically prohibits bullying and cyberbullying, and Board Policy 247, which specifically prohibits hazing.⁵ Like the other policies, each of these sets out a complaint procedure, a process to investigate complaints, and significant consequences for violations.

To reinforce the point, each school building issues its own student handbook with similar provisions prohibiting bullying and harassment. For instance, Lenape Middle School’s handbook provides in part:

Any student who intentionally inflicts, or attempts to inflict, physical or emotional pain on another student is guilty of bullying or harassment. Bullying is more than a one-time event and happens repeatedly over time. . . . If you think you are the victim of harassment, tell your teacher, guidance counselor or any other adult in your building. They will take steps to protect you and to restore a safe environment. Students found guilty of bullying and harassment will be subject to disciplinary measures including, but not limited to, detentions and suspensions.

⁵ *See Board Policy 249: Bullying/Cyberbullying* [hereinafter, “Board Policy 249”] [Ex. 5]; *Board Policy 247: Hazing* [Ex. 6].

Lenape Middle School Policies and Procedures, <http://www.cbsd.org/Page/44828> [Ex. 7]. This provision of the Lenape student handbook is currently in effect and was in effect at all times relevant to this report.

Also, during the 2018–2019 school year, Lenape Middle School instituted a School Wide Positive Behavior Interventions and Supports (“SWPBIS”) program, a “researched-based program that helps schools and districts design a framework to support students with both academics and social/emotion learning.” Lenape Middle School, *SWPBIS*, <http://www.cbsd.org/domain/3720> [Ex. 8]. Part of the SWPBIS program at Lenape is a system of Behavior Data Reports (or “BDRs”). BDRs are one of the methods for teachers to report student misconduct to the school building administration. The SWPBIS-BDR system⁶ categorizes misconduct as either “Minor Problem Behavior” or “Major Problem Behavior.” See SWIS Office Referral Form Definitions [Ex. 9]. The SWPBIS-BDR system allows administrators to monitor both broad trends and an individual student’s conduct. For a school of over 800 students (such as Lenape), the ability of the principal and assistant principal to see whether certain types of misconduct are on the rise, or

⁶ Schools use different terms to refer to this system and to the reports that are generated within it. At Lenape, for example, the reports are referred to as “BDRs,” whereas at other schools the system is referred to as “SWPBIS” and the reports are referred to as “Office Discipline Referrals,” or “ODRs.” To avoid confusion, we refer to all systems implementing the SWPBIS program as “SWPBIS-BDR” systems. When discussing reports generated at Lenape, we use the term “BDR.” Otherwise, when we discuss reports generated at other schools or discuss reports generally, we use the term “SWPBIS-BDR reports.”

whether a particular student is a repeat offender, is invaluable, allowing these administrators to address problems before they escalate or even get out of control.

Particularly pertinent here, the SWPBIS-BDR system has a classification for “Harassment,” which it categorizes as a “Major” offense and defines as “[t]he delivery of repetitive disrespectful messages in any format related to gender, ethnicity, sex, race, religion, disability, physical features, or other protected class.”⁷ The SWPBIS-BDR system was initially piloted at certain schools, including Lenape, and is now used, in one form or another, at all of the District’s middle schools and one elementary school.

In addition to playing a crucial role in student discipline generally, building principals are also designated under Board Policy 104 to receive Title IX complaints of discrimination or harassment, except in those instances where the principal is the subject of the complaint, in which case the complaint is to be made directly to one of the District’s Title IX coordinators. *See* Board Policy 104 [Ex. 3]. The School District has three Title IX Coordinators: Director of Human Resources Lisa Corr (designated Compliance Officer and Title IX Coordinator for Staff Members and for Third Parties); Director of Pupil Services Alyssa Marton (designated Compliance Officer and Title IX Coordinator for Students); and Assistant Superintendent for Secondary Education Charles Malone, Ed.D. (designated Compliance Officer and Title IX Coordinator for Athletics). Although

⁷ 3/22/2022 E-Mail Message from Andrew Burgess to Roberta Gluck et al. [Ex. 10]; SWIS Office Referral Form Definitions [Ex. 9].

Board Policy 104 provides a form that can be used to make Title IX complaints of discrimination or harassment, the form does not need to be used, as even verbal reports will be accepted.

After receiving a Title IX complaint, the building principal must promptly notify the pertinent Title IX Coordinator. *See* Board Policy 104. The Title IX Coordinator will then do an initial assessment to determine whether the complaint is best handled as a complaint of discrimination (in which one set of procedures will apply) or of sexual harassment (in which another set of procedures will apply). *See id.* If the discrimination procedures apply, a five-part process is triggered: (i) intake of the report, assessment, and gathering of information; (ii) initial communication with the complainant or alleged victim and the provision of support and protection from further abuse; (iii) the investigation of the complaint; (iv) the preparation of an investigation report; and (v) corrective action by the District. *See id.* The Policy also sets forth an appeal process and a procedure to protect, when possible, the confidentiality of complainants and alleged victims. *See id.*⁸

III. In the Fall of 2022, the School District Received Four Complaint Letters from OCR.

A. OCR Rejected Mr. Burgess's First Complaint about Alleged Bullying of Student 1.

We have largely organized this report around the four complaint letters OCR sent the School District on September 21, September 23, October 20, and

⁸ The procedure for handling sexual harassment complaints is similar and also set forth in an attachment to Board Policy 104.

December 12, 2022, respectively. It bears mentioning, however, that during our investigation we learned of a fifth complaint filed with OCR, which OCR rejected and of which the School District never received notice from OCR. Specifically, Mr. Burgess told us during his interview that, “a little bit” after creating his March 2022 dossier, he filed a complaint with OCR regarding the alleged bullying of Student 1 (*i.e.*, the same alleged bullying that he concealed from school administrators). *See* Burgess Interview at 161 [Ex. 11]. Mr. Burgess also told us that, in September 2022, OCR Attorney Marshall e-mailed him to tell him that OCR had closed the complaint. *See id.* at 92, 111, 118. A review of Mr. Burgess’s e-mails shows that he and Mr. Marshall were communicating in April and May 2022 about “docket number . . . 03221229.” 5/6/2022 E-Mail Message from Andrew Burgess to Zachary J. Marshall [Ex. 12]. OCR assigns a unique file number to each complaint or investigation, and “03221229” does not correspond to any of the four OCR complaint letters the School District actually received, corroborating Mr. Burgess’s testimony that he filed a complaint with OCR that OCR rejected.

There are several other notable aspects to the communications between Mr. Burgess and OCR. *First*, Mr. Burgess testified that, after compiling the dossier on or about March 3, 2022, he took what he called “a little bit of time” before sending the completed complaint form to OCR by regular mail. Burgess Interview at 18, 161 [Ex. 11]. The OCR Web site offers an electronic option and also an e-mail address and facsimile number to which completed complaint forms can be sent. The OCR Web site also warns that mailing a complaint form could cause delay, due to

staff working remotely: “The majority of OCR staff are working remotely because of the pandemic. Therefore, to ensure receipt of your correspondence, please consider emailing (OCR@ed.gov) or faxing (202-453-6012) it to our office, where it will receive immediate attention.”⁹ Mr. Burgess’s lack of urgency is inconsistent with his story that, in concealing the abuse of Student 1 from the School District while reporting it to OCR, he was acting to protect a transgender student.¹⁰

Second, OCR’s Mr. Marshall himself did not display any urgency. The first e-mail we have between the two is an April 25, 2022, e-mail message from Mr. Marshall to Mr. Burgess, in which the former writes, “I wanted to introduce myself as the attorney assigned to handle your matter against Central Bucks School District with the Office for Civil Rights.” [Ex. 12]. Further, Mr. Burgess testified that it was not until September of that year that Mr. Marshall e-mailed him to tell him that the complaint received in April 2022 about the alleged bullying of Student 1 had been rejected by OCR. *See* Burgess Interview at 92, 111 [Ex. 11].

⁹ An Internet archive shows the same language appearing on OCR’s Web site in April 2022 [Ex. 13], yet the warning about OCR staff “working remotely because of the pandemic” remains to this day [Ex. 14]. It is remarkable that, in April 2023, OCR is still blaming the pandemic for its inability to timely perform basic office tasks such as opening the mail.

¹⁰ According to an April 14, 2022, e-mail message from Robert M. Carey, a “Management/Program Analyst” at the Philadelphia OCR office, Mr. Burgess’s complaint was received by OCR “yesterday,” or April 13, 2022. 4/14/2022 E-Mail Message from Robert M. Carey to Andrew Burgess [Ex. 15]. This e-mail corroborates that there was significant delay between the creation of the dossier and when OCR received the complaint. The delay may have been caused by Mr. Burgess failing to send it immediately (as he testified) or OCR’s failure to timely open the mail (as suggested by its Web site) or some combination of the two.

Third, Mr. Marshall knew that the allegations related to alleged ongoing bullying and harassment. Mr. Burgess told us that he sent the dossier—which was replete with allegations of physical and verbal abuse—to Mr. Marshall, that the two of them talked about the issue over the phone in May 2022, and that he told Mr. Marshall that the information in the dossier had never been reported to the School District. *Id.* at 197–98.¹¹ Further, in his April 25 e-mail to Mr. Burgess, Mr. Marshall refers to the “the student and family involved in the complaint,” indicating that he appreciated that a child’s welfare was at issue. [Ex. 12]. Yet, with this knowledge, Mr. Marshall failed to notify the School District of the allegations in the dossier and OCR complaint, even though he knew the information had been concealed from the District.

During our investigation, we wrote to OCR about Mr. Marshall’s conduct in this case, requesting an opportunity to interview him about what happened, and asking OCR to cooperate with this independent investigation. On February 8, 2023, Beth Gellman-Beer, the Director of OCR’s Philadelphia Office, wrote us, declining

¹¹ Mr. Burgess testified that he either provided to Mr. Marshall a full copy of the dossier or a redacted version in which the names of the alleged perpetrators and witnesses had been redacted. *See id.* In fact, on Mr. Burgess’s work computer system there was a version of the dossier in which pseudonyms were used in place of actual alleged perpetrator and witness names. However, even with these changes, the dossier still conveys the magnitude of the allegations of bullying and harassment. We have attached to this report a copy of the full dossier, with redactions Duane Morris made to protect individual identities [Ex. 16], and the version with the pseudonyms found during this investigation on Mr. Burgess’s work computer system [Ex. 17]. It is important to note that the pseudonyms used by Mr. Burgess [*see* Ex. 17] do not correspond to the ones used in this report (*e.g.*, “Student 1” in Mr. Burgess’s dossier is not the same person as “Student 1” in this report).

to make Mr. Marshall available for an interview. 2/8/2023 Letter from Beth Gellman-Beer to William M. McSwain & Michael J. Rinaldi [Ex. 19]. OCR has otherwise failed to cooperate with the School District's independent investigation.

B. The School District Has Not Heard from the U.S. Department of Justice about This Matter.

On October 7, 2022, the ACLU announced the filing of its administrative complaint with OCR, as well as with the U.S. Department of Justice, Civil Rights Division ("DOJ"). See 10/7/2022 ACLU Administrative Complaint [hereinafter, "ACLU Administrative Complaint"] [Ex. 20]; 10/7/2022 ACLU Press Release, <http://www.aclupa.org/en/news/why-weve-taken-legal-action-against-central-bucks-school-district> [Ex. 21]. To date, the School District has not heard anything from the DOJ about this matter.

The apparent lack of interest from the DOJ can be explained in part by the difference between the DOJ and OCR. In order to bring an action against the School District, DOJ would have to come up with evidence, fully disclosed in discovery, and admissible in court.

By contrast, OCR investigations proceed outside of court supervision and are often accompanied by threats that, if the educational institution does not accede to OCR's demands by agreeing to costly consent decrees and monitorships, federal funding will be cut off. OCR's practices, particularly under Assistant Secretary Lhamon (OCR's current Head and previously the Head in the Obama Administration), have been widely criticized:

OCR immediately commenced a multi-year crusade of coerced compliance with [OCR's] many directives to

federally funded educational institutions. The agency's devices for pressuring campus compliance included threats, humiliation, and myriad interventions on campus. Complaints to the OCR alleging a school's lack of vigilance in addressing sexual harassment readily triggered an extended and costly OCR investigation of the institution. By 2016, the average investigation lasted 963 days. The OCR published systematic lists of those schools under investigation. Many of these OCR investigations ended with consent decrees requiring schools to adopt tactics of questionable legality in the ongoing crusade to redress alleged sexual harassment on campus. The OCR's Sword of Damocles in pressuring the school's compliance was the agency's power to withdraw federal funding from an educational institution.

E.g., Andrew F. Emerson, *Will Due Process Be Returned to Academic Suspension?: An Analysis of Academia's Rejection of the Title IX Final Rule*, 71 *Cath. U. L. Rev.* 105, 121 (2022) (footnotes omitted).

Ms. Lhamon has taken a particular interest in "gender issues":

Catherine Lhamon, whom Biden reappointed to the role of assistant secretary for civil rights at the Department of Education, in which role she heads the OCR, is considered a crusader on gender issues. The OCR intends to ramp up the pressure on school districts to adopt policies that will facilitate students' gender transitions, even without the knowledge or consent of their parents. This marks a disturbing twist in the continuing saga of Title IX expansion, especially considering how the new policy is likely to harm girls disproportionately. Under the political cover of "civil rights," the Biden administration is cementing the school-to-clinic pipeline.

Leor Sapir, *The School-to-Clinic Pipeline*, *City J.*, <http://www.city-journal.org/gender-transitions-school-to-clinic-pipeline> (2022).

In our initial call with OCR, Ms. Deneke rejected our request for the identities of the alleged victims of bullying in the ACLU's complaint (which the

ACLU had redacted), a request we made so that the School District could investigate any alleged wrongdoing and assist and protect any affected students. Ms. Deneke told us that the experience of individual children and any harassment they may have suffered was “irrelevant” to OCR’s investigations. 11/23/2022 Letter from William M. McSwain & Michael J. Rinaldi to Catherine C. Deneke [Ex. 24]. In other words, the specific facts are “irrelevant” to OCR, and OCR evidently expects—because of the pressure of a lengthy and costly federal investigation—that the specific allegations will never be tested or even disputed.

The ACLU has figured this out. During a November 10, 2022, presentation made by Witold Walczak, the ACLU’s lawyer in this matter, Mr. Walczak explicitly cited the “pressure” he hoped the U.S. Department of Education would put on the School District. The ACLU is also a repeat player before OCR. On December 15, 2022, the School District filed a Freedom of Information Act (“FOIA”) request with the U.S. Department of Education, seeking, among other things, all communications between the ACLU and OCR. [Ex. 25]. Although the Department still has not produced the requested documents, the Department’s Deputy FOIA Director, Katie Dullum, wrote Duane Morris on January 6, 2023, about the potential “significant documents” that could turn up in a search, explaining that “OCR has many cases that involve the ACLU.” 1/6/2023 E-Mail Message from Katie Dullum to Michael J. Rinaldi [Ex. 26].

C. *OCR Launches Four Investigations Targeting the School District, Which Were Commenced at the Behest of Activists.*

OCR’s rejection of Mr. Burgess’s complaint about the alleged bullying of Student 1, and DOJ’s apparent lack of interest in the ACLU complaint, leaves us with the four OCR complaint letters received by the School District in the fall of 2022. In each case, OCR has refused to give us the actual complaint. Instead, it has furnished us with a letter summarizing the allegations and demanding that the School District provide documents and information about the allegations and the School District’s operations generally, going back years. In total, OCR has served on the School District document requests consisting of 156 parts and subparts.

The first OCR complaint letter is dated September 21, 2022 [Ex. 27] and relates to the ***Burgess Retaliation Allegations***—specifically, allegations by Mr. Burgess that “the District suspended him from teaching on May 6, 2022 in retaliation for providing the parent of a District LGBTQ+ student with information about OCR and his filing an OCR complaint alleging sex-based discrimination by the District.”¹² Thus, OCR is advancing a complaint that the School District retaliated against Mr. Burgess for filing a complaint (*i.e.*, the one regarding Student 1) that OCR has already rejected.

The second OCR complaint letter is dated September 23, 2022 [Ex. 28] and relates to the ***Policy Allegations***. The complainant is unnamed, and OCR refused to disclose the complainant’s identity. The allegations in this complaint, however,

¹² The OCR letter fails to mention that the suspension was with pay.

bear a striking similarity to the allegations contained in Ms. Smith’s e-mail to Secretary Cardona and OCR Head Lhamon. *See* 7/11/2022 E-Mail Message from Karen Smith to Secretary Cardona & Assistant Secretary Lhamon [Ex. 29]. The complaint alleges:

[T]he District is discriminating against students and employees on the basis of sex. Specifically, the complaint alleges the District is discriminating against District LGBTQ+ students and employees by requiring:

1. teachers to remove rainbow/Pride flags from their classrooms.
2. students to participate in the Human Growth and Development class that corresponds with their sex assigned at birth, rather than their affirming gender identity.
3. students who request to use affirming pronouns or names different than their birth certificate or school records to first receive parent/guardian permission.
4. staff to refer any student that requests a change in name or pronoun(s) to the guidance office.
5. teachers to remove books containing LGBTQ+-based content or themes from classrooms.

OCR’s third complaint letter is dated October 20, 2022 [Ex. 30] and relates to the ACLU’s complaint and the ***Bullying Allegations***: “The [ACLU’s] complaint alleges that the District failed to respond appropriately to the harassment of students based on their sexual orientation and gender identity.”

The fourth OCR complaint letter, dated December 12, 2022 [Ex. 31], relates to the ***Walk-Out Allegations***, and is from an unnamed complainant. It states:

The Complainant alleged the District discriminated and retaliated against her daughter (the Student) and other students, on the basis of sex. Specifically, the Complainant alleged the District:

1. Discriminated on the basis of sex by not allowing the Student and other students, based on their actual or perceived sexual orientation, to reenter the Lenape Middle School building after participating in a May 10, 2022, walk-out protest, whereas, on other occasions, non-LGBTQ+ students were allowed to reenter the building after protesting; and,
2. Retaliated against District students, including the Student, for participating in a May 10, 2022 walk-out protest in support of LGBTQ+ rights by not allowing the students to reenter the Lenape Middle School building.¹³

IV. The School District Commissioned This Independent Investigation to Investigate the Allegations in the Four OCR Complaints.

During our investigation, we reviewed more than 123,000 pages of documents, plus voluminous electronic records, including e-mail communications and other correspondence, student and disciplinary records, School Board meeting minutes, Board Policies and administrative regulations, student handbooks, video recordings, photographs, formal and informal notes, investigation reports, social media postings, and press accounts. We visited School District facilities, including administrative offices, classrooms, and common areas. We even visited the cafeteria at Lenape Middle School while lunch was in session. We interviewed 45 individuals during the course of our investigation, including the principal at each of

¹³ Although the OCR letter refers to the May 10 “walk-out,” these walk-outs in fact continued for several days.

the District's 23 schools. Certain union members, at their option, were accompanied to their interviews by a union representative. One interviewee, Roberta Gluck, a French teacher at Lenape and Tamanend Middle Schools, retained outside legal counsel, who accompanied her to her interview.

Importantly, neither the School Board nor the School District administration put any restriction on our investigative work; instead, they promptly provided access to documents and witnesses whenever they were requested. Our investigation operated independently of the School Board and the administration, and it was focused on the facts. We made no commitment to the School District as to what our findings would be. We had the latitude to make findings, conclusions, and recommendations based on wherever the facts led us.

FACTUAL FINDINGS

I. The School District Was Justified in Suspending Andrew Burgess.

A. Mr. Burgess Was Suspended with Pay from May to August 2022.

Andrew Burgess is thirty-nine years old. Burgess Interview at 14 [Ex. 11]. He received a bachelor's degree in secondary education from Temple University and a master's of education degree from Cabrini College. *Id.* at 16. He began his teaching career in 2006 as a "traveling" social studies teacher for Tamanend and Lenape middle schools and, beginning the following school year, was assigned full-time to Lenape. *Id.* at 14.

Mr. Burgess was a social studies teacher at Lenape until May 6, 2022, when he was suspended with pay. The reasons for the suspension are set forth in a May 6

letter to Mr. Burgess from Andrea L. DiDio Hauber, the School District's then-Director of Human Resources:

What the [School District's] investigation has revealed to date is that a child in your school suffered multiple incidents of bullying by one or more students in your school. Not only were you aware of the situation, but you directed the child and the parents not to report the incidents to the principal, claiming that the administration would not do anything to alleviate the situation.

The investigation is continuing, but what has been revealed to date indicates a dereliction of your obligations to the child and parents of the child in your school, as well as a deliberate failure to follow the proper protocol so that the administration could address and rectify these bullying conditions. Indeed, your actions may have been responsible for the continuation of the bullying suffered by the student.

* * *

In addition to the above situation, it has also been brought to the attention of the Principal that you directed teachers in your building not to speak to the Principal who needed to confer with teachers with respect to issues of appropriate reading materials being made available to students. The purpose of the conversation was to inform the teachers as to the District policy with respect to such materials and was not in any way a disciplinary hearing. It has been reported that you advised teachers not to have such conversations with the Principal and "not to cross Union lines," whatever that may mean.

Your actions in trying to direct teachers to engage in concerted activity would have been a violation of their obligations, not only under the collective bargaining agreement, but also under law. The focal point is that you tried to direct them into this improper activity. . . .

5/6/2022 Letter from Andrea L. DiDio Hauber to Andrew Burgess [Ex. 34].

This suspension lasted until August 18, 2022, when the School District and Mr. Burgess signed a Discharge Warning in which Mr. Burgess agreed:

- a) that he will report immediately any and all instances of bullying of or by students to the Administration;
- b) that he will not instruct, direct or support that parents or students should not seek assistance from Administration for any issue relating to student bullying, discrimination, etc.; and
- c) that he will not interfere in any meetings between Administration and teaching staff in his building.

8/18/2022 Discharge Warning [Ex. 35].¹⁴ Following this, Mr. Burgess returned to teaching, but at Unami Middle School, where currently he is a social studies teacher.

For the reasons that follow, we conclude that Mr. Burgess's suspension was justified. Based on new information developed during this investigation, we further conclude that his current employment with the School District should be suspended without pay.

¹⁴ As a result, the School District did not proceed with a disciplinary hearing, although Mr. Burgess further agreed that any violation of the Discharge Warning could lead to discipline up to and including discharge. *See id.*

B. Over the Course of Weeks, Mr. Burgess Obtained Information from Student 1 about Purported Bullying and Concealed It from the Administration.

1. Even Though Lenape’s Principal, Mrs. Saullo, Immediately Responded to Vandalism of a Bulletin Board Display for Lenape Middle School’s Sexuality and Gender Alliance Club, Mr. Burgess Tried to Use the Incident As a Way to Disparage the School and to Instigate an OCR Investigation.

On February 9, 2022, there was an incident at Lenape Middle School in which a flyer for the school’s Sexuality and Gender Alliance (“SAGA”) club, along with a rainbow flag (which was part of the display with the flyer), were reportedly found in a boys’ restroom at the school. That morning, at 9:38 a.m., Roberta Gluck, a French teacher at Lenape, sent an e-mail to Mrs. Saullo and Lenape’s assistant principal, Lauren Dowd, reporting that, at around 7:10 a.m., she had noticed that the flyer, which had been on a bulletin board, “had been ripped down (leaving one corner),” and that “[o]ne of the rainbow flags was also suddenly missing.”

Within minutes—at 9:44 a.m.—Mrs. Saullo responded, stating that she had pulled the security camera footage but that none of the cameras had a view of the hallway where the bulletin board was. Two minutes later, at 9:46 a.m., Ms. Gluck forwarded Mrs. Saullo’s e-mail to Mr. Burgess and three other Lenape teachers with a one-word message: “Sigh.” [Ex. 36].

Later that morning, Ms. Gluck sent another e-mail to Mrs. Saullo, reporting that the “flyer and flag were found in one of the boys’ bathrooms, and turned in to a teacher.” Mrs. Saullo responded at 11:52 a.m., asking that Ms. Gluck keep her posted and promising to “dig deeper.” Ms. Gluck responded after the end of the school day, at 3:04 p.m., asking whether there were cameras outside the bathroom.

The next day, Mrs. Saullo reported back to Ms. Gluck that “she was able to track down the person responsible.” Ms. Gluck again forwarded this e-mail chain to Mr. Burgess, reporting the “[g]ood news,” *i.e.*, that “she [Mrs. Saullo] got on it right away.” [Ex. 37.]

Mr. Burgess saw this act of vandalism as an opportunity to advance a series of demands and to involve OCR in the management of the School District. At 7:55 a.m. on the day of the incident—45 minutes after Ms. Gluck said she found the flyer and flag missing—Mr. Burgess began drafting a document on his computer, which, based on the language, was intended for an audience outside of the school:

Between the afternoon of 2/8/22 and the morning of 2/9/22 a person vandalized the bulletin board at our school where clubs and activities are posted. A flyer for our student Gay Straight Alliance (known here as SAGA) as well as a rainbow flag were torn down. In the late morning of 2/9/22 these items were retrieved from a student bathroom.

I would like the institution to contract with a reputable and trusted third party organization to conduct sensitivity training for all staff including educators, support staff, bus drivers, administrators, and school board members. I would like the institution to create or publicize a transparent process managed in consultation with OCR to report instances of discrimination; available to the public, students, and staff. I would like the institution to deliver district wide instruction to students about equity and inclusion, and for that instruction to include in a prominent manner the experiences of LGTBQ+IA youth.

[Ex. 38.]

2. *In Order to Bolster His Effort to Instigate an OCR Investigation of the School District, Mr. Burgess Coaxes Two Students to Report Alleged Bullying Incidents Only to Him, Which He Then Concealed from the District.*

Soon after the SAGA flyer and flag incident, Mr. Burgess communicated with two Lenape Middle School students, Student 1 and Student 2, both of whom were in Mr. Burgess's social studies class. Mr. Burgess was attempting to obtain information from these students about supposed bullying of LGBTQ¹⁵ students at Lenape, so that a complaint could be filed with OCR. For instance, on March 3, 2022, Student 2 e-mailed Mr. Burgess, "Today in gym I heard [Student 3] angrily explaining the pronoun situation to his friends and trying to excuse his actions while bashing [Student 4]." Student 2's e-mail bore the subject line "Transphobia will NOT be YASSING in our school." 3/3/2022 E-Mail Message from Student 2 to Andrew Burgess [Ex. 40].¹⁶

For his part, Student 1 wrote Mr. Burgess a lengthy e-mail, setting forth multiple alleged bullying incidents, including:

- having ice thrown at him, being hit, and being subjected to physical threats;
- having a student yell at him and try to trip him;
- being "deadnamed" and being told the name he used was not his "real" name;
- being called a variety of slurs;

¹⁵ "LGBTQ" is an initialism that stands for "lesbian, gay, bisexual, transgender, and queer." See Bill Daley, *Why LGBT Initialism Keeps Growing*, Chi. Trib. (June 2, 2017), <https://www.chicagotribune.com/lifestyles/sc-lgbtqia-letters-meaning-family-0606-20170602-story.html>.

¹⁶ Pseudonyms "Student 3" and "Student 4" (along with other such pseudonyms in this report) are used to protect these students' identities.

- being repeatedly propositioned for a date, despite turning down the offers;
- having food thrown at him in the cafeteria; and
- being called the “r-word.”

3/3/2022 E-Mail Message from Student 1 to Andrew Burgess [Ex. 41].¹⁷

Mr. Burgess then began to organize Student 1’s allegations of bullying and harassment into the dossier, setting forth in a two-page chart the names of the alleged perpetrators, dates and times of the alleged bullying, a description of the alleged events, names of witnesses, and the locations of the events. The remaining two pages of the dossier contain further detail about the alleged events. [Ex. 16.] During his interview as part of this investigation, Mr. Burgess explained that he created the dossier during a meeting with Student 1 and Student 2 during school hours. Burgess Interview at 25–26 [Ex. 11]. According to the dossier’s metadata and contemporaneous e-mail communications, it appears that the dossier was initially created on March 3 and that additional work occurred on it on March 4, when it also appears that Mr. Burgess met with Student 1 and Student 2.

The dossier contains serious and troubling allegations. If true, it shows that Student 1 was subjected to repeated bullying by about a dozen of his fellow Lenape students over the course of months, with some of it continuing on a “weekly” basis or even “3 or 4 times a week.” [Ex. 16.] During his interview, Mr. Burgess was

¹⁷ “Dead name” is a term that refers to “[t]he name given to a transgender person at birth, which they often change when they transition.” *Notable & Quotable: Gender*, Wall St. J., <http://www.wsj.com/articles/notable-quotable-gender-1533250039> (Aug. 2, 2018).

asked whether he ever reported to the School District the information Student 1 gave him:

Q. And did you ever report any of the information that [Student 1] gave you to anyone else at Central Bucks School District?

A. No, I did not.

Burgess Interview at 26 [Ex. 11].

On March 11, 2022, Mrs. Saullo sent an e-mail message to several of Student 1's teachers, including Mr. Burgess, to check on Student 1. Mrs. Saullo wrote, "I know earlier in the year [Student 1] was experiencing some negative attention from peers. I was wondering if you have seen anything lately or if things have improved." Mr. Burgess responded by reporting that "[Student 1] has talked about some of these interactions with me and they do not seem to have improved." He also suggested that, for the following school year, Student 1 be included in classes with certain students (whom Student 1 was "friendly with") while not being placed in classes with others (whom he "seems to not get along with"). Mrs. Saullo responded, "Please encourage [Student 1] to bring these things to our attention. I would hate to see suffering in silence." On March 14, Mr. Burgess replied, "Will do and thank you!" 3/14/2022 E-Mail Message from Andrew Burgess to Geanine Saullo [Ex. 43].

This was untrue. Based on our review of the evidence, Mr. Burgess had no intention of encouraging Student 1 to report anything to the school. In fact, earlier that day, Mr. Burgess had e-mailed Student 1 a hall pass, so that he could provide

Student 1 with instructions on how to fill out an OCR complaint form. 3/14/2022 E-Mail Message from Andrew Burgess to Student 1 [Ex. 44].

The next day, March 15, Mr. Burgess sent Student 2 an e-mail with the subject line “Reminders”:

Who was involved
Where did it happen
Who else was there
What exactly was said and/or done
-Mr. B

3/15/2022 E-Mail Message from Andrew Burgess to Student 2 [Ex. 45]. The records we reviewed do not show a response from Student 2 to that e-mail. Instead, later that day, Student 2 sent Mr. Burgess an e-mail regarding the same subject as his March 3 “Transphobia” e-mail [Ex. 40]. Student 2 wrote:

Thank you for your concern about the [Student 3] situation, Mr. Burgess. I have told the vice principal [Mrs. Dowd] about the harassment from him since we last spoke and it should be cleared up soon.

Mr. Burgess responded: “I am sure Mrs. Dowd will be taking it from here so no further elaboration is necessary.” 3/15/2022 E-Mail Message from Andrew Burgess to Student 2 [Ex. 46].

This e-mail is telling. During the School District’s investigation leading up to his May 2022 suspension and during this investigation, Mr. Burgess proffered as an excuse for not reporting the alleged bullying of Student 1 that, even if he had disclosed it, school administrators would not take any action. During his interview with us, he even told us about additional reports of alleged discrimination and harassment that he had received, from three different parents of children in the

District, which he likewise did not report to the administration. When asked why he failed to report that information, he told us that “based on [his] 14 years of working in the District, [he] did not believe that the administration was going to do anything about this information.” Burgess Interview at 59 [Ex. 11].

His e-mail to Student 2 contradicts that. He did not tell Student 2 that he was concerned that administrators would fail to address the alleged bullying; rather, he told Student 2 that he was “sure Mrs. Dowd will be taking it from here.” Indeed, near the end of the prior school year, Mr. Burgess sent an e-mail to a fellow Lenape teacher regarding Mrs. Dowd’s attention to student behavioral issues: “. . . Lauren [Dowd] has been very responsive this year so I am confident balance will be restored . . .” 5/26/2021 E-Mail Message from Andrew Burgess to a Lenape Middle School Teacher [Ex. 47]. Student 2, for his part, seemed satisfied with Mrs. Dowd’s response, telling Mr. Burgess that the situation “should be cleared up soon.” [Ex. 46.]

Mr. Burgess only vouched for Mrs. Dowd with Student 2 *after* Student 2 had already reported Student 3’s alleged bullying to Mrs. Dowd. On March 3, both Student 1 and Student 2 reported alleged bullying and harassment to Mr. Burgess, but, at that time, he concealed that information from the administration and did not encourage (and, in fact, discouraged) them from making their own reports. Once Student 2, on his own accord, told Mrs. Dowd, Student 2 became less useful to Mr. Burgess, who then turned his focus to Student 1.

As to Student 1, although Mr. Burgess told us that he encouraged Student 1 to make a report to school administrators, we found Mr. Burgess not credible on this issue. For one thing, the e-mail communications between Student 1 and Mr. Burgess reflect Mr. Burgess's pumping Student 1 for information to support an OCR complaint. As to those communications, Mr. Burgess neither makes a report to school authorities nor encourages Student 1 to do so.

Further, Mr. Burgess admitted to telling Student 1 and his mother that he had concerns that, were the alleged bullying and harassment reported to the school, school administrators wouldn't do anything about it:

Q. Did you ever tell [Student 1] or his mother that the administration wouldn't do anything about it?

A. I said that I had concern that the District may not, based on my experience of being in the District for 14 years, but I—I did encourage them to do so.

Q. But you told them that you had concerns and the District wouldn't do anything about it, right?

A. I did.

* * *

Q. You're telling this parent that you have concerns the District won't do anything about him being called [the f word], him being called a tranny?

A. Right.

Burgess Interview at 127–28 [Ex. 11].

A teacher telling a fourteen-year-old student that school administrators wouldn't do anything about reported bullying is tantamount to telling the student

not to report it. It also bears mentioning that Student 1 was from a disadvantaged socioeconomic background and being raised by a single mother, who witnesses told us had her own difficulties in navigating various issues with the school. Another witness (a parent of a gender nonconforming child) told us that she had heard that Student 1 had made suicidal comments to Mr. Burgess. In short, Mr. Burgess picked a particularly vulnerable child and parent to manipulate.¹⁸

When questioned on what it was about his fourteen years of experience that caused him to believe the administration would not address alleged bullying, Mr. Burgess could not provide specifics:

Q. So other than [Student 1], you're not aware of a single student by name who suffered discrimination, harassment or bullying based on his sexuality, sexual orientation, transgender status or any similar characteristic; fair?

A. Fair. I don't know their names.

Burgess Interview at 34–35 [Ex. 11]. When questioned further, Mr. Burgess stated that he had spoken, in late 2021 or early 2022, with three parents of Lenape students who claimed that their LGBTQ children had been the victims of discrimination. Despite several follow-up questions, *see id.* at 36–58, Mr. Burgess

¹⁸ There are similar reasons to be concerned about Mr. Burgess's manipulation of Student 2. In February 2022, a teacher at Lenape reported concerns about Student 2, including behavior such as making “[r]acial, religious, suicidal, drug references” out loud for others to hear, claiming “he’s been bullied, racially profiled, and more,” and having “depression.” 2/4/2022 E-Mail Message from a Lenape Teacher to Geanine Saullo et al. [Ex. 48]. When asked about his comments, Student 2 would “admit[] most if not all things he says are made up.” *Id.*

could not provide any specifics or even identify the parents in question. In any event, he admitted to not providing this information to Lenape's administration:

Q. Okay. So sum total of what you know is, these three other parents approach you. They tell you that you're the vice president of the union, and that's the reason they're reaching out to you, and that their individual children had been discriminated against; that they had reported it to the administration, and that in their opinion, it wasn't resolved, fair?

A. Yes.

Q. Anything else that you recall about those conversations?

A. No, besides being just deeply disturbed by all of it.

Q. Okay, and because you were deeply disturbed about it, I assume you ran right back to the administration and reported it, right?

A. No.

Id. at 57–58 [Ex. 11].

Despite these responses from Mr. Burgess, we dug in further to see if there was any other possible basis for his claim that, based on his fourteen years with the District, the District had ignored alleged anti-LGBTQ bullying. Based on this line of questioning, Mr. Burgess identified two instances, one in which a student gave a “Nazi salute” in the cafeteria during the eighth grade lunch period, and the other involving a student who claimed she witnessed an assault, sexual harassment, and a robbery at Lenape Middle School. As to the former, Mr. Burgess claimed that an administrator told him that the incident would not be addressed because the student was leaving the School District. As to the latter, Mr. Burgess said he

submitted a BDR with the information. As to each of these, Mr. Burgess admitted that the events were unrelated to any alleged anti-LGBTQ discrimination. Burgess Interview at 62–72 [Ex. 11].¹⁹

Mr. Burgess went on to confirm that he was unaware, directly or indirectly, of any other act of discrimination, harassment, or bullying that was not appropriately addressed by the District:

Q. Okay, but what is that based on, in your experience? Have you ever seen that happen?

A. Besides the things that I told you earlier?

Q. Yeah.

A. I can't think of any particular instance besides the Nazi salute and the assault and robbery and sexual harassment.

Q. That's it?

A. You could say that, yes.

Q. Okay, and you're not even aware second or third hand or otherwise indirectly of any other instance where there was an allegation of discrimination, harassment, or bullying that was reported and unresolved, right?

A. Right—

Burgess Interview at 129 [Ex. 11].

¹⁹ Mr. Burgess also said that he reported “deadnaming” of Student 1, in 2021 and then in May 2022, but he admitted that these matters were addressed by guidance and the administration. See Burgess Interview at 66–69 [Ex. 11].

In sum, Mr. Burgess’s “perception” of unaddressed anti-LGBTQ bullying is no excuse for his failure to report the alleged bullying of Student 1. In any event, he confirmed in his sworn testimony that that perception has no factual basis.

3. *Mr. Burgess Was Obligated to Report the Alleged Bullying to the Lenape Middle School Administration.*

Mr. Burgess’s explanation that he failed to report the alleged bullying of Student 1 due to a belief that the administration would not address it lacks all credibility. His own e-mail communications show that—other than to Student 1 and his mother—he expressed satisfaction with the Lenape administration’s response to alleged bullying or discrimination. Mrs. Saullo’s prompt response to the bulletin board vandalism should only have reinforced the point. As discussed in Factual Finding III., below, we found no evidence that the School District (including Lenape Middle School) failed to properly address alleged bullying or harassment of LGBTQ students. This is consistent with Mr. Burgess’s admission, under oath, that he could think of no example of alleged anti-LGBTQ bullying that was not properly addressed by District administrators.

In any event, there is no “I don’t think it will matter” exception to the School District’s policies. What is described in the dossier easily qualifies as allegations of “Repeated Bullying behavior,” which, under Board Policy 218, triggers Level III disciplinary procedures. These Level III procedures require administrator involvement—in terms of “investigating the infraction,” “conferring with staff,” “meet[ing] with the student and confer[ring] with the parent about the student’s

misconduct and the resulting disciplinary action,” and maintaining a “proper and accurate record of offenses and disciplinary actions.” See Board Policy 218.

These Board Policies, together with the other policies described earlier in this report, provide a comprehensive set of procedures for investigating alleged bullying and harassment, protecting victims, holding perpetrators accountable, and, as a result, reducing the incidence of such conduct within the School District. Indeed, multiple principals told us that administrators needed to be involved because, unlike an individual teacher who may see a student for only one class, the principal or assistant principal would be able to address the totality of a student’s behavior and more comprehensively arrange for supports for any affected students. By failing to report the allegations made by Student 1 (as well as Student 2 and the three unnamed parents), Mr. Burgess short-circuited these policies and thereby exposed Student 1 and potentially other students to possible harm.

In failing to follow these policies, Mr. Burgess is subject to discipline under *Board Policy 317: Conduct/Disciplinary Procedures* [Ex. 49], because, among other things, he violated Board Policies and had nonprofessional relationships with students. He displayed conduct unbecoming a teacher. Teachers should not hold secrets for students about ongoing harm they might be suffering. Teachers should not tell students that administrators and guidance counselors will not help them, in direct contravention of Lenape’s student handbook.²⁰ Teachers should not allow

²⁰ The handbook says, “If you think you are the victim of harassment, tell your teacher, guidance counselor or any other adult in your building. They will take steps to protect you and to restore a safe environment.” [Ex. 7.]

bullying—which allegedly was occurring multiple times a week—to persist unaddressed for weeks.²¹

For its part, the ACLU discusses this issue in its complaint:

To date, CBSD has not identified any policy or protocol that [redacted] failed to follow. Despite the primary stated reason for the suspension being failure to report bullying, nobody from CBSD administration has reached out to [redacted] or his family regarding a plan to rectify bullying conditions.

ACLU Administrative Complaint at 47 [Ex. 20]. Here, again, we see multiple redactions by the ACLU, but, assuming the former is a reference to Mr. Burgess and the latter is Student 1, we can say that these allegations are false. As detailed above, Mr. Burgess violated multiple policies. As for Student 1, Mrs. Saullo did reach out to Student 1’s family about their concerns about alleged unaddressed bullying, even as Mr. Burgess withheld critical information and discouraged Student 1 and his mother from reporting their concerns. Upon learning from District administrators that they had been contacted by a concerned parent who had complained about bullying but who would not leave her name, Mrs. Saullo identified the parent as Student 1’s mother using “caller ID” and immediately reached out to her. [Ex. 50.] After the call, during which Student 1’s mother told

²¹ These same basic principles are enshrined in the Pennsylvania Code of Professional Practice and Conduct for Educators. According to the Code, teachers must “exercise their rights and powers in good faith and for the benefit of the student,” “maintain appropriate professional relationships and boundaries with all students at all times,” and “exert reasonable effort to protect students from harm.” 22 Pa. Code § 235.5a(b)(2), (4). Although the Code does not provide an independent basis to discipline a teacher, *see* Act of Dec. 12, 1973, P.L. 397, No. 141, 24 P.S. § 2070.5(a)(10), we nonetheless find the principles set forth in it instructive.

Mrs. Saullo that she had been told by a teacher (presumably, Mr. Burgess) that “the district does not have things in place to address her concerns,” Mrs. Saullo arranged for Student 1 to meet with his guidance counselor, who then held multiple sessions with Student 1 in March 2022, all of which was documented at the time. [*E.g.*, Ex. 51 (counseling documentation regarding Student 1).]

The ACLU also claims that “CBSD does not have any policy requiring teachers to submit BDRs.” ACLU Administrative Complaint at 44 [Ex. 20]. Here, the ACLU plays a game of semantics. The reason the School District does not have a BDR policy is that BDRs (and the SWPBIS program of which they are a part) are not districtwide; rather, the SWPBIS-BDR system is used only at some District schools. But one of those is Lenape Middle School, and Mrs. Saullo, during her interview, told us that teachers were (and are) required to report “Major” infractions, such as “Harassment.” In fact, on March 22, 2022, Mr. Burgess was on an e-mail chain where it was pointed out to him that “Harassment” was a “Major” offense. He responded, “Good to know, thank you for checking in on this!!” [Ex. 10.]

During his interview, Mr. Burgess admitted that he understood he was obligated to report such alleged bullying and harassment:

Q. And you said that you knew you were under an obligation to report instances of bullying, discrimination, harassment, to the extent that you couldn’t resolve them in the classroom, correct?

A. Right.

Q. And you agreed with me that the ones involving [Student 1], you were not able to resolve in your classroom, correct?

A. Yeah.

Q. So it stands to reason that those are ones that you would have to report to the administration, correct?

A. Yes.

Burgess Interview at 32 [Ex. 11].

It is also noteworthy that, right around the time Mr. Burgess failed to file a BDR or otherwise report the alleged harassment of Student 1, he was frequently filing BDRs on many other things, such as one on March 7, 2022, because a student did not put his laptop away quickly enough during a presentation, and one on March 10, for a student sharing energy drinks with other students. [See Ex. 52.] In total, during the 2021–2022 school year, which for him was cut short due to his suspension, Mr. Burgess filed 70 BDRs, *the second highest at Lenape*. During her interview, Ms. Gluck told us that Mr. Burgess was planning to host a training on the SWPBIS-BDR system at Lenape. We were even told that Mr. Burgess played a role in designing the BDR program at Lenape.

Moreover, Mr. Burgess frequently posted to an internal Microsoft Teams chatroom for teachers, in which he displayed extensive knowledge of how the system worked, a seeming glee in “writing up” students, and an acknowledgment that the administration quickly responded to BDRs. Among his comments from 2021 and 2022 were:

- “Something I really like this year is how prompt Lauren Dowd has been with responses to BDR reports when I submit them. . . . I think I get a reply either the same day

or the next day with what is happening with it every time.”

- “[H]ey all I am doing is a BDR minor for work refusal, this is defined as defiance in BDR. . . . Im [sic] hoping it piles up enough to turn over to a major.”
- “BDR city!! Let em rain.”
- “Pick me up in fantasy BDR ball I am going for a new PR [personal record] today.”
- “Next stop BDR city: Connections to Ineligibility Station, Conference Town, and Detention World.”
- Responding to a question from another teacher about the appropriate response to one student biting another: “BDR major.” When the other teacher responded with a follow-up question, noting that she did not witness the biting, Mr. Burgess responded, “. . . [I]ll write it.” He also wrote, on November 19, 2021, “So the Great Chomp of 2021 happened in October. Still writing both students up.”

Microsoft Teams Chat Log (various dates in 2021 and 2022) [Ex. 53].

Further, in May 2021, another Lenape teacher forwarded Mr. Burgess an e-mail message reporting that students had witnessed another student texting slurs on his phone. Mr. Burgess responded, “Thanks, if you can BDR this I think it will be best.” The other teacher responded by telling Mr. Burgess that she had not actually witnessed the events and that she had already made a report to Mrs. Dowd. Mr. Burgess responded, “Sounds good, Lauren [Dowd] has been very responsive this year so I am confident balance will be restored, feel free to keep me posted, and thanks for taking this step of reporting, I think it makes a big difference!” 5/26/2021 E-Mail Message from Andrew Burgess to a Lenape School Teacher [Ex. 47].

Based on these facts, the ACLU’s argument that the School District lacked policies or procedures requiring the reporting of alleged bullying or harassment or that Mr. Burgess was confused about his obligations makes no sense. Rather, Mr. Burgess concealed the information from the School District so that he could instigate an OCR investigation, even though, as Mr. Burgess frequently admitted, school administrators were quick and thorough in addressing BDRs and other reports of misconduct, and that such reporting “makes a big difference.”

We also note the circumstances under which Mr. Burgess created the dossier. During both the School District’s 2022 investigation and this investigation, he sometimes attempted to explain his failure to report the alleged bullying to the School District based on a desire to protect the confidentiality of Student 1. However, by his own admission during his interview, Mr. Burgess created the dossier in his classroom in the presence of both Student 1 and Student 2. Burgess Interview at 25–26 [Ex. 11]. Even if we were to credit his excuse for not following the established disciplinary procedures (which we don’t), there is no reason why information about alleged bullying of Student 1 needed to be shared with Student 2.²² Mr. Burgess’s inclusion of Student 2 in a meeting in which sensitive

²² Student 2 appeared hesitant to go along with Mr. Burgess’s plan (evidenced by his March 3 e-mail to Mr. Burgess, which was less fulsome than Student 1’s e-mail that day, and later by his reaching out directly to Mrs. Dowd). [*Compare* Exs. 40, 46, *with* Ex. 41.] It is fair to conclude that one of the reasons Mr. Burgess included Student 2 in this meeting was to prompt him to come up with information about alleged bullying in the same way Student 1 was doing.

information about Student 1 was discussed is further evidence of his nonprofessional relationships with students and conduct unbecoming a teacher.

In addition to the School District’s disciplinary procedures, Board Policy 104, which guarantees “an equal opportunity for all students to achieve their maximum potential through the programs offered in the schools regardless of race, color, age, creed, religion, gender, sexual orientation, ancestry, national origin, marital status, pregnancy or handicap/disability,” makes immediate reporting of violations to the building principal mandatory.²³ Further, Board Policy 104 “encourages students, employees, and third parties who believe they or others have been subject to Title IX sexual harassment, other discrimination or retaliation to promptly report such incidents to the building principal, even if some elements of the related incident took place or originated away from school grounds, school activities or school conveyances.” In discouraging Student 1 and his mother from making a report to school authorities, Mr. Burgess acted contrary to the stated policy of the Board of School Directors.²⁴

During the investigation, Mr. Burgess claimed that he did not make a report to school authorities because Student 1 and his mother did not want such a report

²³ What was then Board Policy 103 [see Ex. 54] was merged into Board Policy 104 [see Ex. 3] as part of a revision and renumbering of certain Board Policies in 2022. See School Board Meeting Minutes of December 5, 2022 [Ex. 55]. The current Board Policy 103 (which was previously Board Policy 103.1) concerns nondiscrimination relating to qualified students with disabilities. In this report, the former Board Policy 103 and current Board Policy 104 will be referred to interchangeably.

²⁴ Cf. 22 Pa. Code § 235.5a(b)(7) (“[E]ducators . . . [s]hall not interfere with a student’s exercise of political or civil rights and responsibilities.”).

made and that they instead wanted to file a complaint with OCR. In its complaint, the ACLU also claims that Mr. Burgess “respected [redacted, presumably Student 1] and his family’s request to not submit a BDR” and that “[redacted, presumably Student 1] and his family subsequently decided they wanted [redacted, presumably Mr. Burgess] to file an OCR complaint, but not report the harassment to CBSD administration.” ACLU Administrative Complaint at 44 [Ex. 20].

This story does not stand up to scrutiny. For instance, as Mr. Burgess’s conduct was coming to light in spring 2022, the School District spoke with Student 1 and his mother. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Student 1’s mother also told Mrs. Saullo that she was unsure whether she wanted to fill out the form and “was also confused about how this complaint form would help [Student 1] in the short term.” [Ex. 50.]

It is unclear whether Student 1’s mother ever did submit the form to OCR, because OCR never provided us with this complaint (or any of the complaints), and did not even tell us about this complaint (we only learned of it through our investigation). But the facts suggest that she did not. For one thing, during his interview, Mr. Burgess told us that he filed the complaint “on behalf of the student.” Burgess Interview at 19 [Ex. 11]. A search of Mr. Burgess’s e-mails during this investigation revealed that Mr. Burgess went ahead and signed the “Consent Form”

for the OCR complaint himself. [Ex. 56]. All of this suggests that Student 1 and his family were less willing participants in Mr. Burgess’s plan than he and the ACLU suggest. Rather, the evidence suggests that after Mr. Burgess received an e-mail from OCR on April 14, 2022 [Ex. 15] stating that a signature was required on the Consent Form—and having failed to convince Student 1’s mother to go along—Mr. Burgess just went ahead and signed the form himself [Ex. 56].²⁵

Regardless, a 14-year-old who supposedly is being subjected to repeated bullying and harassment is in no position to decide whether or how a report is to be made, and, if anything, the circumstances suggested even more so the need to direct the allegations to Lenape’s principal. Also, whether to make a report to the school was not a decision for Student 1 or his mother to make—the obligation rested with Mr. Burgess. And others had interests at stake, such as other students at Lenape who themselves could have been bullied. Even Student 1’s mother correctly perceived that Student 1 was left unassisted because of Mr. Burgess’s actions (“[Student 1’s mother] was also confused about how this complaint form would help [Student 1] in the short term”).²⁶

²⁵ As noted above, OCR has failed to be transparent with the School District regarding the various complaints. But even what information OCR provided about the Burgess Retaliation Allegations suggests that Student 1’s mother did not file the complaint but that Mr. Burgess was the complainant. [*Cf.* Ex. 27 (“the District suspended him from teaching on May 6, 2022 in retaliation for providing the parent of a District LGBTQ+ student with information about OCR and his filing an OCR complaint alleging sex-based discrimination by the District”)].

²⁶ Ultimately, whether Mr. Burgess convinced Student 1 or his mother to participate in the OCR process does not change the fact that he discouraged them from reporting to the school. School-reporting and OCR are not mutually exclusive. In this instance, it seems, at a minimum, Student 1’s mother expressed reservations

To be clear, we do not take issue with anyone filing an OCR complaint, provided he is acting honestly and in good faith.²⁷ But a teacher is not allowed to ignore his duties by failing to report allegations of ongoing bullying or otherwise failing to abide by the School District’s established disciplinary procedures. Nor is he permitted to discourage a student and his mother from pursuing an option they had under Board Policy 104 and other policies—specifically, to file a complaint with the School District.

4. *Mr. Burgess Had an Ulterior Motive for His Actions.*

We also find that, in failing to report alleged bullying, Mr. Burgess had an ulterior motive: namely, he disliked certain policies that the District was considering or had implemented and that he considered unfriendly to the LGBTQ community, such as the proposed library policy. If he could bring to light supposedly unaddressed bullying of LGBTQ students and get a federal agency to investigate it, the School Board would feel pressure to relent on its new policies. During the School District’s investigation leading up to his May 6, 2022, suspension, Mr. Burgess referenced national LGBTQ issues as one of the reasons he filed the OCR complaint but failed to notify the school administration. According to Mrs. Saullo’s notes of an April 19, 2022, meeting with Mr. Burgess:

about foregoing a process (*i.e.*, school-reporting) that would have provided help to her child “in the short term.”

²⁷ In fact, the School District’s student handbook provides information about how to file an OCR complaint. See 2022–2023 Central Bucks School District Family Handbook [Ex. 18].

Andrew [Burgess] said he met with the parent and student about filling out the form and nowhere on the form did it require him to let admin know. He also stated that Lenape has the same problems that the nation has when it comes to bullying and discrimination. Andrew was reminded that he was a mandated reporter and should report issues. He replied nothing that was reported to him warranted reporting. He didn't alert admin or guidance of the issues, but instead kept a list to then supply to the student to help fill out a federal form—OCR.

4/19/2022 Fact Finding Meeting Notes [Ex. 57].

During this time, Mr. Burgess used his position as union Vice President to attempt to interfere with Mrs. Saullo's communications with teachers about their classroom libraries. As principal, Mrs. Saullo is responsible for the education provided at Lenape, including the materials used with students. On March 23, 2022, Mrs. Saullo sent an e-mail to Lenape's teachers requesting a meeting with each teacher if the teacher had "a classroom library of books that students have access to." 3/23/2022 E-Mail Message from Geanine Saullo to Andrew Burgess [Ex. 58]. Within 13 minutes, Mr. Burgess sent a reply, copying two other union officers, requesting a group meeting. After Mrs. Saullo responded that the matter was not a union issue, Mr. Burgess sent Mrs. Saullo yet another e-mail stating, "The conversations are a union issue as disciplinary action from the board is implied." *Id.* This was incorrect—a meeting between the principal and a teacher, like the one Mrs. Saullo was suggesting, is not disciplinary in nature such that union representation rights are triggered. But Mr. Burgess's reference to the School Board, which was then considering policies related to the age-appropriateness of

classroom materials, shows that he was focused on this issue, which was a hot button issue both locally and nationally.²⁸

The national and local press have helped to advance the narrative that Mr. Burgess is a victim who was suspended for protecting a transgender child. This includes a January 1, 2023, article in the *New York Times*. [Ex. 59]. In that front-page article, in which Mr. Burgess’s photograph appears (wearing a Central Bucks Education Association–branded facemask and windbreaker), he is quoted as saying, “I did not expect my administrators to be pleased with the decision that I made, but I felt like it was my responsibility as an educator. . . . But I was concerned that I would be complicit if I became aware of this information and allowed it to sit.”²⁹ But that is precisely what he did—he manipulated two children and allowed information about alleged bullying “to sit,” all while trying to enlist OCR in his cause.³⁰

²⁸ Mr. Burgess does not contest the fact that the administration has authority over such matters: “Q. Okay, and you would agree with me that the School District Administration has control on what books go on the shelves and in classrooms and libraries, right? A. Yeah.” Burgess Interview at 179 [Ex. 11].

²⁹ Erica L. Green, *Strife in the Schools: Education Dept. Logs Record Number of Discrimination Complaints*, *N.Y. Times*, p. A1 (Jan. 1, 2023), <https://www.nytimes.com/2023/01/01/us/politics/education-discrimination.html#:~:text=Nearly%2019%2C000%20complaints%20were%20filed,figures%20provided%20by%20the%20department> [Ex. 59].

³⁰ Mr. Burgess testified that he told the *New York Times* reporter, Erica L. Green, that he was suspended for failing to report bullying of a student. He also told us that he “went through the contents of” his suspension letter with Ms. Green, but that Ms. Green did not ask for a copy of it. Burgess Interview at 86–87 [Ex. 11]. Despite having this information, nowhere in Ms. Green’s article is there any mention of Mr. Burgess being suspended for failing to report the bullying of a student. [Ex. 59]. Similarly, Maddie Hanna, a *Philadelphia Inquirer* reporter, sent

During his interview, Mr. Burgess initially denied having even seen the *New York Times* article, and only admitted to reading it after the absurdity of his position was pointed out to him:

Q. So you're quoted in the article. There's a picture of you in the article. This is obviously very important, but you're saying you don't know if you actually read the article?

A. I'm trying to remember what I did on New Years Day. Yes, I did read the article. I remember now the article mentioned the, the students in Alabama in the trailers. So, yes, yes, I did read this article.

Burgess Interview at 89–90 [Ex. 11]. His evasive testimony on this issue demonstrated that he comprehended that press coverage such as this could actually undercut his credibility once the facts came out.

In short, Mr. Burgess's manipulation of Student 1 and Student 2 not only served his ulterior motive, but it also enabled him, with the assistance of the *New York Times* and other friendly press outlets, to portray himself as a victim and a protector of students. As explained above, in purposefully violating numerous

Mr. Burgess an e-mail on May 9, 2022, stating, "Reaching out because I saw a petition created in support of you, indicating you'd been suspended for giving a trans student a phone number to call if they felt unsafe or were being bullied. Is this accurate?" 5/9/2022 E-Mail Message from Maddie Hanna to Andrew Burgess [Ex. 60]. Mr. Burgess told us that he did not confirm that information with Ms. Hanna and did not even know who she was. Burgess Interview at 83–84 [Ex. 11]. Despite not having heard back from Mr. Burgess (at least according to Mr. Burgess), she nonetheless republished hearsay from an online petition: "An online petition with more than 3,000 signatures calling for his reinstatement alleged that Burgess was suspended 'for giving a trans student a phone number to call if they felt unsafe or bullied.'" Maddie Hanna, *Central Bucks Parents Protest Removal of Pride Flags and Other Actions They Say Are Hostile to LGBTQ Students*, Phila. Inquirer, p. 3 (May 11, 2022) [Ex. 61].

District and Lenape Middle School policies, he did not protect Student 1, but endangered him.³¹

During our investigation, we learned that Mr. Burgess was not alone in his effort to manufacture a crisis of supposed unaddressed bullying at Lenape. During her interview, Ms. Gluck, a French teacher at Lenape and moderator of the school's SAGA club, told us that, around December 2021, she was approached by Stephen Albert, then a former Lenape assistant principal and a vocal activist on LGBTQ issues and frequent attendee at School Board meetings. Mr. Albert asked Ms. Gluck to get information from SAGA club members (*i.e.*, students at Lenape Middle School) about stories of LGBTQ bullying and harassment in the School District that they had heard.

According to Ms. Gluck, in January or February 2022, she made that inquiry of SAGA members at a club meeting and reported the information to Mr. Albert, who, again according to Ms. Gluck, was to send a "compilation" e-mail to a Lenape administrator. During our investigation, we found a February 6, 2022, e-mail message from Mr. Albert to Mrs. Saullo and Mrs. Dowd, which copied various individuals, including Borough of Doylestown officials, Ms. Pray, Superintendent Lucabaugh, and the three Democratic School Board members. The e-mail does not

³¹ On April 11, 2023, Mr. Burgess filed a federal civil rights complaint against the School District and Superintendent Lucabaugh that largely recycles the false narrative that Mr. Burgess was a victim of retaliation for protecting LGBTQ students. *See Burgess v. Central Bucks Sch. Dist.*, No. 23-cv-01369 (E.D. Pa. Compl. filed 4/11/2023).

provide any specific information, including the names of any alleged bullying victims or perpetrators. 2/6/2022 E-Mail Message to Geanine Saullo et al. [Ex. 62].

In our view, Ms. Gluck demonstrated poor judgment in gathering information, for someone unaffiliated with the School District, about alleged bullying and harassment and then relying on that person to make a report. Ms. Gluck provided potentially relevant information to Mrs. Saullo after Mrs. Saullo sent her an e-mail, on March 11, to check in on how Student 1 was doing. Ms. Gluck's reply e-mail of March 17 (which she then immediately forwarded to Mr. Burgess) stated that Student 1 identified three supposed bullying "ring-leaders," and Ms. Gluck added some generalized information about bullying that either occurred at school or "in town." 3/18/2022 E-Mail Message from Roberta Gluck to Geanine Saullo [Ex. 63]. For one of the alleged "ring-leaders" (who will be referred to as "Student 5"), Ms. Gluck told Mrs. Saullo about alleged misbehavior in the cafeteria.

Ms. Gluck's March 2022 e-mail plays a central role in the ACLU's administrative complaint:

Around March 2022, members of Lenape Middle School's Sexuality and Gender Alliance ("SAGA") student club reported rampant anti-LGBTQ+ bullying, particularly during lunchtime. SAGA members identified three primary bullies. This information was shared with Lenape Middle School administration, including Principal Saullo. Administration informed teachers that administration could not do anything to address anonymous reports of bullying, so nothing could be done if students were unwilling to submit formal reports of the bullying.

ACLU Administrative Complaint at 45 [Ex. 20].

The ACLU's allegation tells an incomplete story. The ACLU did not include a copy of the Gluck e-mail as part of its complaint, but we have included it with this report. [See Ex. 63.] As to two of the supposed student "ring-leaders," the only information Ms. Gluck provided is that Student 1 and unnamed members of the SAGA club identified them as such. As to the third "ring-leader" (Student 5), the e-mail states that he "has been known to launch himself through the air onto the lunch table where many of the LGBTQ students sit."

This generalized information does not provide a sufficient basis to discipline any of the three students. That does not mean, however, that Lenape administrators did "nothing," as the ACLU claims. ACLU Administrative Complaint at 45 [Ex. 20]. Rather, within days of Ms. Gluck's e-mail, Student 5 was observed bullying students, which resulted in "Major" BDRs being filed against him and an immediate response from Lenape's administration, which, among other things, suspended his cafeteria privileges. [See Exs. 64 & 65.] Ms. Gluck, who was informed of the suspension of cafeteria privileges, wrote Mrs. Dowd, "When [Student 5] does earn cafeteria privileges back, could you inform the cafeteria duty aides of this, and perhaps have them station themselves closer to the table of students in our LGBTQ community?" [Ex. 64.] Within minutes, Mrs. Dowd wrote back, "Yes, I will let them know," to which Ms. Gluck responded, "Merci!" *Id.*

The ACLU did not provide any of this information, despite having access to Ms. Gluck. During her interview, Ms. Gluck admitted that, during the course of

this investigation, she has engaged in “Zoom” meetings the ACLU’s lawyer in this case, Witold Walczak, and others. Among the topics discussed during these meetings was the Burgess dossier discovered by Duane Morris. It is also noteworthy that, in the spring of 2022, Ms. Gluck would forward e-mails to Mr. Burgess regarding the subject matter of alleged bullying.

Ms. Gluck’s March 17 and 18 e-mails to Mrs. Saullo [Ex. 63] can be understood as a ploy to “set up” Mrs. Saullo, by making vague allegations that could later be used by the ACLU as “proof” that Lenape’s administration failed to respond to bullying. Mr. Burgess also told us that he spoke with the ACLU just four days before his interview. Burgess Interview at 165 [Ex. 11]. That Ms. Gluck, Mr. Burgess, and the ACLU continue to coordinate to this day strengthens the conclusion that they are acting to advance their own aims.

There is also reason to believe that the allegations in the dossier were exaggerated or even false. The dossier [Ex. 16] purports to catalog incidents of unaddressed harassment, including some that allegedly happened in a classroom other than Mr. Burgess’s. Burgess Interview at 32–34 [Ex. 11]. We interviewed the teacher in whose class the first two entries of the dossier occurred. She remembered the incident, but she did not say anything about this incident involving “deadnaming,” as the dossier claimed. Specifically, she told us that Student 4 complained that Student 3 and another Student (“Student 6”) were making fun of yet another student (whose name the teacher did not recall). Regardless, the important point is that this teacher addressed the situation immediately,

reprimanded the students, and resolved the issue—all contrary to Mr. Burgess’s contention that the dossier contains instances of unaddressed student misconduct.

In addition, on December 21, 2022, we sent letters (by e-mail and first-class mail, postage prepaid) to the parents of Student 1 and Student 2 (and the parents of five other children) seeking interviews of them and their children in connection with this investigation. Student 1’s mother responded that day, and provided her mobile telephone number and e-mail address and suggested conducting the interview by Zoom. Soon thereafter, on December 26, we received an e-mail from Mr. Walczak of the ACLU, wanting to talk about the interviews we requested. We told Mr. Walczak that we would speak with him about any individuals that he represented, but that we could not speak with him about our investigation generally.

Mr. Walczak refused to provide information on whom he represented.

12/26/2022 E-Mail Message from Witold Walczak to Michael J. Rinaldi & William M. McSwain [Ex. 67]. After our correspondence with Mr. Walczak, we did not hear further from Student 1’s mother, despite several attempts to reach her. Given the facts that we otherwise developed, and given Mr. Walczak’s interference with our process, it seems fair to assume that these interviews would have undercut the ACLU’s argument that Mr. Burgess was improperly suspended.

Our investigation showed that School District administrators—including Mrs. Saullo and Mrs. Dowd—acted reasonably and appropriately whenever alleged bullying and harassment occurred and took proactive steps (*e.g.*, pulling security footage, checking in on students, alerting cafeteria monitors to issues, arranging for

counseling sessions, etc.) to address any issues. Indeed, Mr. Burgess and Ms. Gluck realized this, as their own contemporaneous communications show. It also explains why they needed to collude with the ACLU. Mr. Burgess, Ms. Gluck, and the ACLU needed to create the impression that there was widespread, unaddressed bullying in the School District in order to bolster their case against School District policies with which they disagreed. In the meantime, Mr. Burgess exposed children to potential danger and unfairly denigrated the reputations of administrators who have dedicated their careers to educating the children of the Central Bucks School District.³²

C. OCR's Complaint, Alleging Improper "Retaliation" Against Mr. Burgess, Lacks Any Factual Basis.

We conclude that Mr. Burgess was suspended for the reasons identified in Mrs. Hauber's letter of May 6, 2022, and not to "retaliate" against him for the filing of an OCR complaint or providing information to a parent regarding OCR. In fact, the School District was not even aware that Mr. Burgess had filed his complaint "on

³² We raise for the Lenape administration's consideration whether Ms. Gluck should remain the moderator of Lenape's SAGA group. Under her control, this group appears to have devolved into a grievance mill dedicated to undermining student confidence in the School District's support for LGBTQ students. As we learned from our interviews, unlike other student groups at Lenape, as well as the other LGBTQ-focused student groups in the District, Lenape's SAGA lacks basic structure and a well-defined agenda of activities. Rather, as one Lenape guidance counselor told us, it functions as a place for students to commiserate and "admire the problem," instead of devoting time to developing solutions. Ms. Gluck appears to encourage students to dredge up old slights, including secondhand stories they "heard" from others. One of the possible reasons why there was a greater perception of LGBTQ harassment at Lenape than what we found at other District schools is that teachers like Ms. Gluck and Mr. Burgess were using their positions to cultivate a sense of victimhood.

behalf of” Student 1 until this independent investigation uncovered that fact. Although the School District knew that Mr. Burgess gave Student 1 an OCR form for the filing of a complaint, this played no role in the decision to suspend him. Interviews and contemporaneous documents confirm that the School District suspended Mr. Burgess because he (i) had failed to report to the School District the alleged bullying and harassment of Student 1, (ii) had advised Student 1 and his mother not to report the allegations, and (iii) had improperly interfered with Mrs. Saullo’s communications with the teaching staff about classroom library materials.

In doing these things, Mr. Burgess violated state law and School District policy, interfered with the operations of Lenape Middle School, and endangered students entrusted to his care, which provides ample basis for the School District’s decision to suspend him. During the course of this investigation, we learned even more information about Mr. Burgess’s actions, including his manipulation of Student 2 and his failure to report alleged bullying reported to him by three parents. Because such conduct is inconsistent with his duties as a teacher, and for the other reasons set forth in this report, it is our recommendation that the School District suspend his employment without pay.

Given that OCR knew about the dossier and that Mr. Burgess had not reported its allegations to the School District administration, OCR should have immediately contacted the School District, so that Student 1 could have been further supported and protected. Not only did OCR fail to do that but it launched a federal investigation against the School District based on an allegation that the

School District “retaliated” against Mr. Burgess—an allegation that OCR knew was false. OCR and its current leadership weaponized federal investigatory resources to attempt to force the District to adopt OCR’s preferred policy alternatives and, in order to achieve that goal, was willing to participate in Mr. Burgess’s cover-up, thereby endangering Student 1.

II. Lenape Middle School Administrators Did Not Engage in Impermissible Discrimination or Retaliation by Not Allowing LGBTQ Students Who Had Walked Out of School to Come and Go As They Pleased.

A. Following the School District’s Decision to Suspend Mr. Burgess with Pay, a Prolonged Protest Ensued at Lenape Middle School.

After Mr. Burgess was suspended on May 6, 2022, a nearly weeklong protest ensued at Lenape Middle School, from May 10 to 13. The protests were promoted by local adult activists. For instance, Marlene Pray—the founder and director of the Rainbow Room, a local organization focused on education and support for LGBTQ youth and young adults—touted the protests on social media. Ms. Pray is also an ACLU client in this matter. One of her Facebook posts from early in the week of May 9 called for the protests to occur “EVERY DAY THIS WEEK May 10–13” to “TAKE ACTION TO BRING BACK MR. BURGESS & PROTECT OUR SAFE SPACES.” [Ex. 68.]

Ms. Pray and Larissa Hopwood, another local activist, showed up at Lenape and organized an automobile protest in which they drove around the school building sounding their horns and jumping curbs to evade police officers who had been summoned to the building, and the police had to direct them to leave the premises. Later that week, two non-Lenape students (one of whom was Ms. Hopwood’s child)

drove up to Lenape with boxes of pizza and other food “trying to entice students to join their protest for free food.” This caused a “completely unsafe . . . riot-stampedede like situation,” with about “300 . . . students in the cafeteria . . . up and running around and many of them pressed in the door jams (exterior doors) and against the windows.” [Ex. 69.] Outside activists who trespassed on school premises ignored directions from school personnel to leave, necessitating the Central Bucks Regional Police Department being called to the scene. All the while, students were walking out of class, either to join the protest, to get free food, or just because they wanted to be outside as opposed to attending classes.³³

We interviewed administrators, guidance counselors, and teachers at Lenape about this situation. As students were walking out of class throughout the week, Lenape staff quickly communicated by e-mail, in an effort to keep track of which students had walked out. These e-mails were directed to Mrs. Saullo, who, as she learned of students walking out, promptly contacted parents or guardians (or made attempts to do so), so that the students could be picked up.

An example of this is an e-mail from a Lenape teacher from 12:48 p.m. on May 10, reporting that three students had walked out. Thirteen minutes later, Mrs. Saullo responded, “All parents have been called.” 5/10/2022 E-Mail Message from Lenape Teacher to Geanine Saullo [Ex. 70]. Mrs. Saullo told us that, to the extent she knew of a child leaving school for the “walk-out,” she promptly contacted

³³ This account of the walk-outs is documented in contemporaneous correspondence [see Ex. 69] and was recounted to us in several interviews.

or attempted to contact the child's parent or guardian, a fact corroborated by the documentary evidence. However, it appears that in the ensuing chaos, some students slipped out of the building without being noticed.

Some students used the protests simply as a cover to avoid going to classes. In the above example, one of the three students who had walked out ("Student 7") was observed about ten minutes later leaving the school grounds. 5/10/2022 E-Mail Message from Geanine Saullo to a Lenape Teacher & Lauren Dowd [Ex. 71]. A minute after learning this fact, Mrs. Saullo informed Student 7's mother by e-mail: "Hello again, I believe [Student 7] has completely left school grounds at this point. He is not in the building and not at the protest and a teacher saw from her window that he ran to the back of the tennis courts and off of school grounds." 5/10/2022 E-Mail Message from Geanine Saullo to Student 7's Mother [Ex. 72].

A member of the School Board wrote about the subject on social media. School Director Mahmud posted on Facebook on May 12, 2022, "I also did not vote to remove a teacher who supported [gender nonconforming students]." [Ex. 73.] As discussed above, Mr. Burgess was not suspended for the reason identified by Dr. Mahmud. Further, and as Dr. Mahmud knew, there was no "vote" on Mr. Burgess's suspension; rather, it was a decision made by Superintendent Lucabaugh.

The walk-outs drew Lenape into the national spotlight, with Steve Silberman, a writer for *Wired* magazine, accusing Mrs. Saullo of "terrorizing kids who stood up for a teacher that defended an #LGBTQ+ student against bullying."

[Ex. 74]. Keith Olbermann, another well-known national commentator, wrote on Twitter of Mrs. Saullo: “LET’S END HER CAREER.” *Id.*

As a result, Mrs. Saullo—a dedicated public school administrator since 1999 whose teaching experience goes back to 1993 after her graduation from the Pennsylvania State University—has been the recipient of hate mail, vicious voicemail messages, and death threats stemming from the protests. One such death threat, posted by a Lenape student to an Instagram thread related to the protests, read: “rip Mrs. Saullo she done for.” The student was interviewed by Ms. Marton on May 13 and asked why he had made the threat. He responded that “[i]t was the protestors.” He was also asked how Mrs. Saullo probably felt, to which he responded, “Scared because she didn’t know if I meant it or not.”³⁴ Another threat, apparently by an adult in the community, was reported by Mrs. Saullo to the Central Bucks Regional Police Department. As a result, patrols were increased at Mrs. Saullo’s home and at the school.

It was not just death threats, but also various profane e-mail messages and telephone calls that were directed at Mrs. Saullo. For instance, this e-mail from May 12, 2022:

What the fuck is wrong with your heart? You are a vile bitter human and it should be illegal for people like you to work around children. You are an extreme example of the bullshit that CBSD has been allowing for its entire history. Kids kill themselves because of people like you, but as long as your misinformed hateful agenda is

³⁴ These questions were part of the Threat Assessment and Response Protocol, a set of procedures used by school systems across the country in response to threats of violence against schools. [Ex. 75.]

enforced, you don't give a single shit. The world is watching. Resign now.

5/12/2022 E-Mail Message to Geanine Saullo [Ex. 76].

This situation persisted from May 10 to 13 and severely disrupted the educational process at Lenape Middle School. The impact was especially felt by Lenape's special education students, who are particularly affected by disruptions in the school-day routine. One such special education student, who, according to school administrators, "was ramping up all week due to the many distractions in the building," had to be restrained by four school staff members (all of whom sustained injuries as a result) and was taken to Doylestown Hospital, where a mental health report was made. [Ex. 69].

At the end of this week of chaos, a student from Central Bucks High School East sent this e-mail message to Mrs. Saullo:

You are a vile, repulsive idiot who does not understand the law. . . . I cannot WAIT for you to either step down or be removed from power. Because one of the two will happen. Fuck you and every surface-level thought your puny brain has. High schoolers are now organizing to come show support to the children affected by your bigoted legislation. . . . Keep calling the cops on us and we will continue to show up. ACLU will cover our story.

5/13/2022 E-Mail Message from a Central Bucks High School East Student to Geanine Saullo [Ex. 77].

This e-mail is remarkable, not just for its vulgarity. The student captures exactly what happened at Lenape that week. Outsiders (*i.e.*, non-Lenape students

and adult activists) descended on Lenape to disrupt the school’s operations and did so in violation of lawful police orders, all done with the backing of the ACLU.³⁵

B. Mr. Burgess Colluded with ACLU Client Marlene Pray in Support of the Protests.

The protests were based on a false premise—that Mr. Burgess had been suspended because he had supported LGBTQ students.³⁶ It also appears that the adult activists who promoted the May 10 to 13 protests knew the actual reasons for the suspension and, despite this, coaxed students to join a protest in support of a teacher who was supposedly “protecting” them.

Mr. Burgess testified that he had told Ms. Pray the reasons for his suspension—including that he had failed to report bullying of a child—and had even

³⁵ Republican School Board members have also received vile, hateful voicemail messages, sample transcripts of which have been appended to this report. [Ex. 78.] One such voicemail message stated: “You can’t even manage your weight you fat white hideous [c word]. You think you should be in charge of children? You’re an ignorant psychologically weak and damaged waste of scum and it’s just very unfortunate that your mother didn’t abort you in the first place. [Sighs]. Ms. Piggy fat [c word]. Hopefully a semi-truck plows into you today for the betterment of human kind. Your ignorance is on full display and you will be judged accordingly by history.”

³⁶ Mr. Burgess’s suspension was covered in the local press, which, while acknowledging that the reasons for the suspension were “unclear,” nonetheless reported speculation by unidentified parents and students as to the reasons for the suspension. See, e.g., Emily Rizzo, *String of Central Bucks School District Decisions Lead LGBTQ Students and Faculty to Fear for Civil Rights, WHY?*, <http://why.org/articles/central-bucks-school-district-lgbtq-students-pronoun-policy/> (May 11, 2022) [Ex. 79]. (“On Friday, May 6, Lenape Middle School teacher Andrew Burgess, who is seen as an ally to LGBTQ students in the district, was placed on a leave of absence. The reason for that decision remains unclear. Amid other recent actions in the district, some parents and students question if the motive is related to his support for LGBTQ students.”).

gone through “the contents of the [suspension] letter” with her. When asked what Ms. Pray said in response, Mr. Burgess claimed that he couldn’t remember, citing memory issues:

Q. So after you got the letter, you spoke to Marlene [Pray]?

A. Yes.

Q. What did you tell her?

A. I told her the contents of the letter.

Q. Okay, and what did she say?

A. I—I can’t remember. I’m sorry. It was a difficult time for me, and it’s remaining a difficult time. It’s just, having some issues with memory and things like that.

Burgess Interview at 79–81 [Ex. 11].

Ms. Pray also sat for an interview with us, represented by Mr. Walczak of the ACLU. Also present was Ms. Pray’s husband, David Conn, a partner at the law firm of Sweet, Stevens, Katz, and Williams LLP. When we asked Ms. Pray whether Mr. Burgess ever told her why he had been suspended, Mr. Walczak interjected that she did not need to answer, and she so declined to answer. Ms. Pray did, however, tell us that she had nothing to do with organizing the May 2022 protests at Lenape. This is contradicted by her social media post, which explicitly called for the protests, and contemporaneous accounts by Lenape staff members about Ms. Pray’s involvement. [Exs. 68, 69.]

During her interview, Ms. Pray attempted to exculpate Mr. Burgess by claiming that, in March or April 2022, she had told Courtney Nolan, a guidance

counselor at Lenape, about a Lenape student who, according to Ms. Pray, was being relentlessly bullied. According to Ms. Pray, she provided no details about the nature of the bullying, other than, possibly, that the student had been kicked in a hallway. Ms. Pray also told us that Mr. Burgess knew that she had reported this alleged bullying. Ms. Pray would not disclose the name of the child at issue.

However, given the references to Mr. Burgess and the timeframe at issue (March or April 2022), it appears that Ms. Pray was attempting to leave us with the impression that she had reported to the school administration that Student 1 was being bullied. Despite the fact that Ms. Pray was not specific during our interview (*e.g.*, she refused to name the child), we felt compelled to assume, for the sake of argument, that Ms. Pray was referring to Student 1 and to determine whether her claims were true.

Based on our interviews and review of the documentary record, we have concluded that Ms. Pray was not being truthful but instead was engaging in misdirection. We interviewed Ms. Nolan, who did not recall ever speaking with Ms. Pray about Student 1, nor ever being told by Ms. Pray about an LGBTQ student being kicked in a hallway.

Ms. Nolan also explained that Ms. Pray frequently e-mails her, seeking information about various students or to express her views about Lenape or the School District. A review of Ms. Nolan's e-mails from the relevant time period confirms that Ms. Pray would frequently e-mail Ms. Nolan, sometimes multiple times a day, including about trivial matters. Ms. Pray would also contact Ms. Nolan

on her personal phone. All of this led Ms. Nolan to be more deliberate about setting “boundaries” with Ms. Pray and to document all her contacts with her, particularly when Ms. Pray would try to elicit information about other parents’ children. In the documents we reviewed, there is no written record of Ms. Pray ever contacting Ms. Nolan about Student 1 during the relevant timeframe. This corroborates Ms. Nolan’s recollection that Ms. Pray did not tell her that Student 1 was being bullied in school.

Even if we were to credit her story (which we don’t), Ms. Pray, in terms of specifics, only claimed to have told Ms. Nolan about a kicking incident, while Mr. Burgess’s dossier contains far more serious, and many more, allegations of bullying and harassment. Perhaps unwittingly, though, Ms. Pray further implicates Mr. Burgess in wrongdoing. From the interviews of Mr. Burgess and Ms. Pray, it is likely that the two were discussing the details of the alleged bullying of Student 1. Thus, a teacher who claimed to be protecting student confidences appears to have been discussing the matter with a community activist who was plotting and promoting disruptive protests at Lenape.

Ms. Nolan has been a guidance counselor for five years and is specifically assigned to about half of the students at Lenape, or a case load of about 450 students. According to our review of the documentary evidence, as well as interviews of other teachers and administrators at Lenape, she appears to be very responsive to student concerns and reports of misconduct, including any harassment or bullying. Particularly relevant is an October 2021 incident in which

Student 1 [REDACTED]

[REDACTED]

[REDACTED] 10/14/2021 E-Mail Message
from Jodi Schmon to Courtney S. Nolan [Ex. 80]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ms. Nolan’s response to this e-mail (stating that she “met with both of them [Students 8 and 9] and was pretty firm” and inviting Ms. Schmon to “[l]et [her] know if [Student 1] shares anything again”) evidences her conscientious approach to the allegations. Far from being indifferent, Ms. Nolan promptly addressed the issue. The e-mail chain also shows that Student 1 had no difficulty coming to guidance with such issues and, in fact, saw the counselors as the logical place to turn—until Mr. Burgess convinced him that guidance would not help him.

When we interviewed Ms. Nolan, we showed her Mr. Burgess’s dossier, which she told us she was previously unaware of. In her view, if a teacher were to withhold such information from the school administration, the teacher would be undermining guidance counselors’ efforts to provide resources to and maintain a safe environment for students. Ms. Nolan also told us that the teacher would be putting the child who was experiencing the incidents at risk.

We agree. The Central Bucks School District, including Lenape Middle School, has procedures in place to support and to protect students. Dedicated

educators, such as Mrs. Saullo, Mrs. Dowd, and Ms. Nolan, acted in good faith to protect their students. When Mr. Burgess decided to undermine those protections, the School District administration promptly took action, which led to his suspension. Ms. Pray decided to promote protests that disrupted Lenape's operations, and did so in order to cover for Mr. Burgess's misconduct.

C. The School District's Response to the Walk-Out Was Appropriate and Did Not Constitute Improper Discrimination or Retaliation.

1. State Law and School District Policy Require Students to Be in Class While School Is in Session.

The School District has attendance and student discipline policies that, in accordance with Pennsylvania law, require all students to attend school during the days and hours that school is in session. These policies define excused or lawful absences to include: (i) illness; (ii) obtaining professional health care or therapy services; (iii) quarantine; (iv) a family emergency; (v) recovery from an accident; (vi) a required court attendance; (vii) a death in the family; (viii) participation in certain 4-H or Future Farmers of America activities; (ix) religious observance; (x) with approval, college or postsecondary institution visits; (xi) with approval and subject to other conditions, non-school-sponsored educational tours or trips; and (xii) other urgent reasons, consistent with the Pennsylvania Public School Code of 1949 and the regulations promulgated thereunder. All other absences are unexcused or unlawful. *E.g., Board Policy 204: Attendance* [hereinafter, "Board Policy 204"] [Ex. 81]; *see also, e.g., Act of Mar. 10, 1949, P.L. 30, No. 14, 24 P.S. § 13-1329* (relating to excuses from compulsory attendance).

Students who walked out of school during the May 2022 protests violated state law and School District policy. To the extent the Lenape administration was aware that a student had walked out, the student was marked for an unexcused or unlawful absence, which is consistent with state law and School District policy. Thus, we find the School District acted appropriately in this regard.

2. *The School District Was Justified in Maintaining Building Security and the Integrity of the School Day.*

The December 12, 2022, OCR letter claims that the School District discriminated and retaliated against LGBTQ students, including in particular an unidentified student whose mother filed an OCR complaint, by not allowing the students to reenter the Lenape school building after walking out. Although OCR has not identified the complainant, we do note that District parent Jennifer Herring was particularly vocal on social media, claiming that the Lenape administration refused to allow her daughter readmission to the school after walking out. [Ex. 82.]

Based on our investigation, we determined that students who participated in the “walk-outs” were permitted to reenter, provided they came to the school’s front door, which was the secure access point for the building. In addition to interviews, there was documentary evidence of this, including a May 11 e-mail message from Lynn Brauns (Mrs. Saullo’s secretary) to Mrs. Saullo, which included the note “3 girls came in and confirmed that they were in for the rest of the day.” 5/11/2022 E-Mail Message from Lynn Brauns to Geanine Saullo & Lauren Dowd [Ex. 83]. Ms. Brauns sits near the front door and would have been in a position to observe these events. Similarly, Mrs. Dowd wrote in an e-mail to Mrs. Saullo on May 10: “In

order for them to reenter the building, they will need to check in at the main office.”
5/10/2022 E-Mail Message from Lauren Dowd to Geanine Saullo [Ex. 84].

In addition, Ms. Herring had extended e-mail correspondence with Charles Malone, the assistant superintendent for secondary education. In it, she purportedly recounts a June 2, 2022, telephone conversation with Mr. Malone regarding the May 2022 protests. Mr. Malone responded that:

I was able to connect with Mrs. Saullo and asked her recollection of phone calls. She does recall making a series of phone calls earlier in the morning explaining to parents that students did not make attendance. She does not recall any student being shut out who asked to go to the bathroom as she encouraged kids to come through the main entrance so she could monitor. Your child did not ask Mrs. Saullo or Mrs. Dowd to use the restroom. The staff asked the students to either stay out and protest or come in the building, but they could not have students sneaking in and out during the school day without the staff knowing.

6/6/2022 E-Mail Message from Charles Malone to Jennifer Herring et al. [Ex. 85].

This e-mail exchange corroborates what we found, which was that the school administration did not allow students to come and go through whatever door they desired, but would allow students to reenter through the school’s front door. Lenape’s front door (or “main entrance”) is secured through electronic locks and an intercom system in a manner typical of modern school buildings. This type of security is an unfortunate result of school shootings and other violence that has affected schools around the country. Schools understandably take such matters very seriously. To have allowed students to prop open doors or to be let in at access points other than the main entrance would have circumvented these security

protocols. That would be dangerous anytime school is in session, but it is especially the case during a time of heightened tension.

There was one instance in which a student was not allowed back in the building, but it related to a circumstance different than that cited by Ms. Herring. In particular, Student 10 joined the protest, and Mrs. Saullo called Student 10's mother to inform her of that fact. However, Student 10's mother (unlike Ms. Herring) did not approve of her child protesting during the school day. In fact, Student 10's mother sent an e-mail to a Lenape teacher: "Please do not tell [Student 10] she's allowed to protest if she wants to [sic] and then the principal calls me like something is wrong! She's there to learn not leave to protest." 5/10/2022 E-Mail Message from a Teacher to Geanine Saullo & Lauren Dowd [Ex. 86]. In that case, Mrs. Saullo wrote that Student 10 was not allowed back in the building, and "Mom said she would be over to pick her up." *Id.*

In addition to security concerns, Mrs. Saullo also cited in her correspondence with Ms. Herring the need to maintain the integrity of the school day as a rationale for the school administration's approach to the protests. *See* 5/11/2022 E-Mail Message from Jennifer Herring to Geanine Saullo et al. [Ex. 87]. To allow students to come and go as they pleased would have undermined the structure of the school day, caused additional disruption, and negatively affected the learning of the vast majority of students who remained in class. Mrs. Saullo and other Lenape staff members were doing the best they could under difficult circumstances, including

multiple days of disruption, the presence of outside activists on campus, and threats of violence.

Mrs. Saullo’s approach to the protests—and in particular the question of whether to allow students to reenter the school building after walking out—was appropriate. In fact, to have allowed students to come and go through multiple entry points would have been contrary to the sound interests of school safety and the integrity of the school day. Further, despite Mrs. Saullo’s insistence on upholding those interests, she demonstrated a desire to accommodate the students where possible. Thus, she did not merely secure the building and not allow anyone back in, but instead found a way to safely bring students back into the building through the front entrance.

D. The Walk-Out Allegations of Discrimination and Retaliation Are Without Basis.

The School District’s response to the Lenape protests was reasonable and in furtherance of legitimate school safety and pedagogical interests. There is no evidence that the School District treated other similar “walk-out” protestors differently, nor that the School District’s approach to the May 2022 protests was motivated by anti-LGBTQ discrimination or a desire to improperly retaliate against anyone.

OCR’s approach to this complaint is further evidence of its weaponization of federal investigatory resources. OCR does not have jurisdiction over student attendance policies or school-level determinations about which doors students can use to access a building. Nevertheless, OCR launched a federal investigation—

which, on the walk-out subject alone, has gone on for over four months and includes 26 document and information requests and subparts, seeking documents and information going back years. It is also noteworthy that, even though the protests occurred in May 2022, OCR instituted this investigation in December 2022—shortly after the School District, through Duane Morris, notified OCR that it would not simply accede to any demands OCR might make but instead would commission this independent investigation.

We conclude that the OCR complaint related to the Walk-Out Allegations is factually and legally baseless. We further conclude that the School District should continue to act in accordance with the sound school safety and pedagogical interests that motivated its response to the May 2022 Lenape protests. The OCR complaint letter seems to suggest that the School District should have operated differently, including by allowing students access to the school building without restriction. Putting aside that there is no jurisdictional or legal basis for such an assertion by OCR, such an approach to building security would endanger students. For these reasons, we told OCR, by letter of February 15, 2023, that the School District would continue to enforce its attendance and school safety policies without regard to OCR's investigation.

III. The School District Responded Appropriately to Any Alleged Bullying or Harassment of Students Based on Their Sexual Orientation or Gender Identity.

A. The ACLU's Complaint Is Light on Specifics.

According to OCR's letter of October 20, 2022: "The [ACLU's] complaint alleges that the District failed to respond appropriately to the harassment of

students based on their sexual orientation and gender identity.” [Ex. 30]. In reality, the redacted version of the ACLU’s complaint (which is all that we have) says very little about alleged harassment or the School District’s response to it. Instead, the ACLU complaint is almost entirely dedicated to a discussion of School District policies with which the ACLU disagrees and which it calls “discriminatory.” ACLU Administrative Complaint at 38–43, 58–69 [Ex. 20].

The ACLU also alleges that Mr. Burgess was improperly suspended. *See id.* at 43–48. It says that several students showed up at School Board meetings to oppose Mr. Burgess’s suspension and the policies to which the ACLU objects. *See id.* at 48–53, 56–58. And it complains that Superintendent Lucabaugh and School Board President Hunter issued a May 17, 2022, statement in which they “reaffirmed [their] position” and did not accede to the demands of the student protestors. *Id.* at 53–55, 68.

None of that makes for a federal civil rights complaint. The policies at issue are in accord with the law and are neutral on their face and in application (*see* Factual Finding IV., below). Mr. Burgess’s suspension was justified (*see* Factual Finding I., above). Although students are entitled to their views that Mr. Burgess should have been reinstated in the spring of 2022 and that the policies should be rescinded, that doesn’t mean that Superintendent Lucabaugh or the School Board has to accede to their demands, or that Superintendent Lucabaugh or President Hunter weren’t entitled to “reaffirm” their positions on these personnel or school policy issues.

The rest of the ACLU's complaint consists of generalized allegations of harassment, but few specific allegations. Further, some of the "specific" allegations are so heavily redacted that the School District couldn't investigate them. But where there were specific allegations that could be investigated, we generally found that the ACLU's claims are unsupported by the evidence.

It also bears mentioning that, even if we were to assume the accuracy of much of what the ACLU alleges, it would not amount to harassment or bullying.

Board Policy 104 defines "harassment" as:

Harassment is a form of discrimination based on the protected classifications listed in this policy consisting of unwelcome conduct such as graphic, written, electronic, verbal or nonverbal acts including offensive jokes, slurs, epithets and name-calling, ridicule or mockery, insults or put-downs, offensive objects or pictures, physical assaults or threats, intimidation, or other conduct that may be harmful or humiliating or interfere with a person's school or school-related performance when such conduct is:

1. Sufficiently severe, persistent or pervasive; and
2. A reasonable person in the complainant's position would find that it creates an intimidating, threatening or abusive educational environment such that it deprives or adversely interferes with or limits an individual or group of the ability to participate in or benefit from the services, activities or opportunities offered by a school.

And Board Policy 249 defines "bullying" as:

Bullying means an intentional electronic, written, verbal or physical act or series of acts directed at another student or students, which occurs in a school setting and/or outside a school setting, that is severe, persistent or pervasive and has the effect of doing any of the following:

1. Substantial interference with a student's education.
2. Creation of a threatening environment.
3. Substantial disruption of the orderly operation of the school.

These definitions are in accord with federal and Pennsylvania law. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21–22 (1993); Act of Jul. 9, 2008, P.L. 846, No. 61, 24 P.S. § 13-1303.1-A.

Much of what is alleged by the ACLU are isolated instances of name-calling and the like, which simply do not amount to “bullying” or “harassment.” In this regard, we found the interviews of Central Bucks High School East principal Chad Watters and Tamanend Middle School principal Brian Caughie to be instructive. Dr. Watters and Dr. Caughie—both of whom impressed us as dedicated and caring educators—told us that they distinguish between “student conflict” and “bullying” and that there were important pedagogical reasons not to confuse the two. Student conflict will exist in any school, and it is important to resolve that conflict and to ensure that it does not morph into bullying. Bullying exists—as the above definition makes clear—when the conduct is persistent or pervasive or is severe due to, for instance, a power imbalance, and creates substantial disruption or a threatening environment. Dr. Watters and Dr. Caughie told us that bullying, and in particular of LGBTQ students, is virtually nonexistent at their respective schools, which is corroborated by the disciplinary records and other documents we reviewed.

Dr. Caughie, whose school has a relatively new gay-straight alliance group called “Unity Club,” spoke about the potential pitfalls in creating a sense of victimhood in LGBTQ students. According to Dr. Caughie, LGBTQ students, just like all other students, must learn to deal with conflict. One way that Dr. Caughie teaches students to deal with conflict is to talk with them about building a strong pro-social circle. He works to build a supportive environment and to let students know that peers are looking out for them. Dr. Caughie explained that students of all types are called names, which is unpleasant. But that does not necessarily mean that a child is being “bullied.” Turning every instance of conflict into an allegation of bullying is counterproductive and teaches LGBTQ students that they are victims and that they do not need to work out conflict for themselves, which is an important life skill. To be sure, both Dr. Watters and Dr. Caughie were clear that instances of actual bullying would be met with decisive administrator action, which is corroborated by the documentary evidence we reviewed.

In our view, the School District—including dedicated educators such as Dr. Watters and Dr. Caughie—has struck the right balance. Our investigation revealed no widespread or systemic bullying issue at any of the District’s 23 schools. Indeed, during their interviews Mr. Burgess, Ms. Gluck, and Ms. Pray—all individuals with a vested interest in identifying acts of unaddressed bullying—were not able to cite a single specific instance of reported and unaddressed bullying anywhere in the School District.

Notably, the only person the ACLU ever told the School District it was representing in this matter was Ms. Pray. Despite our repeated inquiries, the ACLU would not identify any student it represented. Had the ACLU been representing students, it potentially would have been operating under a conflict. As discussed above, Ms. Pray knew the real reason Mr. Burgess was suspended (because Mr. Burgess admitted to reviewing the suspension letter with her), yet she nonetheless promoted the May 2022 “walk-out” protests and encouraged students to forsake their education for a week to join in her protest. We doubt those students (or their parents) would have been as enthusiastic about the protests had they known what Ms. Pray knew.³⁷

In the pages that follow, we address those ACLU allegations that we can (given the ACLU’s many redactions), discuss our investigatory findings, and make recommendations to the School District.

B. Our Investigation Has Found That the ACLU’s Allegations Are Unsupported by the Evidence.

The ACLU’s complaint references unnamed students, who it claims were the subject of bullying or harassment. Although the School District asked the ACLU and OCR for their identities, the ACLU and OCR refused to provide that information. When Duane Morris reached out to several sets of parents or

³⁷ Interestingly, Ms. Gluck, during her interview, told us that Mr. Walczak told her that the ACLU could not represent her because the ACLU was representing certain district students, which would present a conflict of interest. Nevertheless, the ACLU is representing Mr. Burgess in his recently filed federal lawsuit against the District.

guardians of current or former District students whom Duane Morris thought might have relevant information (including Student 1 and Student 2), the ACLU stood in our way. Our investigation has revealed the likely reason for this: there is no factual basis for the ACLU's allegations that the School District is deliberately indifferent to reports of anti-LGBTQ bullying or harassment, or that the School District allowed such conduct to persist.

For example, the ACLU's complaint alleges that, during the 2022–2023 school year, an unidentified student ate lunch in the bathroom “to avoid bullying” until a staff member “caught them and ordered them to a remote hallway location.” ACLU Administrative Complaint at 10 [Ex. 20]. This allegation is untrue. From our investigation, we have determined that this is a reference to Student 1. We learned that Student 1 was in fact discovered by a Lenape staff member eating lunch in the bathroom during the 2022–2023 school year. But Student 1 told the staff member that he was eating there because his friend group (with which he would normally eat lunch in the cafeteria and which consisted of other LGBTQ students) had broken up, and he had no one to eat with. The staff member who found Student 1 didn't “order[] [Student 1] to a remote hallway location.” Instead, she offered to allow Student 1 to eat anywhere he would like, so that he wouldn't have to eat in the bathroom, and Student 1 chose the location where he finished his lunch.

The ACLU's complaint further alleges that “several trans students told us they were afraid to eat lunch in the cafeteria” and that “[t]hese students also

expressed fear and trepidation about returning to their schools this fall [*i.e.*, the fall of 2022].” *Id.* at 10. This allegation is incomplete and misleading. In fact, we spoke with the mother of one gender nonconforming student, Student 11, who had expressed such concerns in spring 2022. But Student 11’s mother told us that “things got really good” for Student 11 after Mr. Burgess was removed from Lenape. She further told us that the Lenape administration “really supports [Student 11] at school” and that the current school year is going well for her child. This corroborates our finding about Mr. Burgess’s detrimental impact on Lenape. With him no longer at the school, students could receive direct support from administrators and guidance counselors.

With respect to the Lenape administration’s response to Student 1, the ACLU alleges that, after Mr. Burgess’s conduct came to light in spring 2022, no one from the School District reached out to Student 1 or his family. ACLU Administrative Complaint at 47 [Ex. 20]. That is not true. As discussed above (*see* Factual Finding I.), Mrs. Saullo immediately contacted Student 1’s mother when Mrs. Saullo became aware of the mother’s concerns. After the call, Mrs. Saullo directed a guidance counselor to meet with Student 1, resulting in multiple counseling sessions in March 2022. Mrs. Saullo, alongside school administrators, continued to closely monitor the situation to ensure that Student 1 was not subjected to bullying or harassment. This finding is corroborated by contemporaneous meeting notes and communications. [See Exs. 50, 51.]

The ACLU ignores the administration’s response and instead relies on public comments made by students in defense of Mr. Burgess during the May 10, 2022, School Board meeting, including that Mr. Burgess “knew exactly what to do,” how the students would report bullying to Mr. Burgess “knowing that he would do something about it,” and how guidance counselors would not help them. ACLU Administrative Complaint at 48–50 [Ex. 20]. One student even stated that the student “stopped going to guidance and I went to Mr. [Burgess].” *Id.* at 49. Far from supporting the ACLU’s position, these comments demonstrate the problem. Mr. Burgess created a cult of personality around himself and convinced these students that he—and only he—would support them. But, as discussed above, Mr. Burgess covered up what was reported to him and didn’t do what he was supposed to do. He kept the dossier concerning Student 1 and withheld its allegations from the school administration, while discouraging Student 1 and his mother from reporting the allegations to the school. When the information about Student 1’s alleged bullying came out, guidance counselors, teachers, and administrators were there to support Student 1.

The ACLU’s complaint tries to downplay Mr. Burgess’s misconduct in failing to report bullying incidents involving Student 1 by claiming that “CBSD does not have any policy requiring teachers to submit BDRs.” *Id.* at 44. Mr. Burgess’s own conduct and statements belie this allegation. As discussed in Factual Finding I., Mr. Burgess was a self-proclaimed expert in using the school’s SWPBIS-BDR system, which he used to report all kinds of student misconduct, and he knew that

he was required to report “Harassment” incidents as a “Major” offense. [Ex. 10.] Mr. Burgess even credited the administration’s quick response to BDRs. Microsoft Teams Chat Log (various dates in 2021 and 2022) [Ex. 53].

The ACLU also claims that “CBSD has not identified any policy or protocol that [redacted, presumably Mr. Burgess] failed to follow.” ACLU Administrative Complaint at 47 [Ex. 20]. In addition to the BDR protocol, there are numerous policies and procedures that Mr. Burgess violated, as previously discussed above.

The ACLU also alleges that the School District “abruptly canceled” a presentation by the Gender and Sexuality Development Clinic of the Children’s Hospital of Philadelphia (“CHOP”) and “blamed the cancelation on a professional employees’ [sic] union request regarding equal lunch breaks for all staff on professional development workdays.” *Id.* at 59–60 [Ex. 20]. It was Mr. Burgess himself who was the “professional employee” who circulated the request that, when honored by School District administrators, resulted in the cancelation of the CHOP session, which coincided with the lunch break and could not be rescheduled.

4/12/2022 E-Mail Message from Andrew Burgess to Abram Lucabaugh et al. [Ex. 22].

The ACLU alleges that, “[i]n early 2021,” certain unidentified School Board members “mock[ed]” a request from a District employee “to attend a Widener University workshop on inclusive practices for trans students.” ACLU Administrative Complaint at 62 [Ex. 20]. As an initial matter, this incident occurred before the November 2021 Municipal Election, so it has no connection to

the allegation that “actions by the school board” since April 2022 are “exacerbating” the alleged hostile environment for LGBTQ students. *Id.* at 2. In any event, the ACLU admits that “[t]he Board ultimately approved the funding request at a later meeting.” *Id.* at 62. Records we reviewed during our investigation show that District teachers routinely attend professional development courses on inclusive practices and diversity.

In one of the ACLU’s most explosive allegations, it states that “[t]he District has experienced multiple serious incidents of student self-harm, including one trans student attempting to take his life in school in 2019,” which the ACLU argues resulted from “relentless anti-transgender bullying.” *Id.* at 10, 44. Again, this incident occurred in 2019—before the November 2021 Municipal Election when the ACLU says the School Board became hostile to LGBTQ students.

Moreover, the facts discovered during our investigation do not support the ACLU’s allegation. We spoke with the student’s elementary and middle school principals, as well as guidance counselors, who told us that, up to and including the time of the attempted suicide, the student did not identify as transgender, and that neither school’s administration was aware of any bullying incidents involving the student. It was only after the suicide attempt that the student began to identify as a transgender male. According to our interviews with these administrators, the student struggled with serious mental health issues and has spent time in private schools for students with mental health needs, including at the most restrictive mental health private placement available to students in the District. The School

District followed all appropriate protocols, including approving an outside mental health placement for the student.

The ACLU's generalized allegation that there is a hostile environment for the District's LGBTQ students is also undermined by student responses to a 2021 survey in which the School District participated concerning student wellbeing. According to the most recent data, "[r]eports of bullying behavior has decreased in all grades" over the past twelve months and was below the statewide average. 2021 Pennsylvania Youth Survey Presentation [Ex. 89]; Central Bucks School District Profile Report at 49 [Ex. 90].³⁸ The most frequent reasons that students reported being bullied were "the way I look [clothing, hairstyle, etc].," "some other reason," and "my size [height, weight, etc].." Central Bucks School District Profile Report at 49 [Ex. 90] (brackets in original). For "sexual orientation"-based bullying, the Central Bucks School District was below the state average. *See id.* at 56 [Ex. 90]. Although survey data has limited utility (which is one of the reasons we conducted our extensive investigation of the facts), the actual data are consistent with what we found, which is that the School District supports and accepts all of its students.

Our investigation focused on the facts and found that the ACLU's allegations are unsupported by the evidence. We found that, all across the District, students

³⁸ The Pennsylvania Youth Survey ("PAYS") is a biennial survey of schoolchildren, conducted under the Commonwealth's auspices, which is administered in those public, private, parochial, and charter schools that choose to participate. The survey includes questions about alcohol and narcotics use, violent behaviors, mental health, and related subjects. The Commonwealth reports the survey data in the aggregate and by participating school district.

learn from professionals who are committed to their success and wellbeing. Conflict certainly happens, as it does each day in schools all over the country. But the narrative that LGBTQ students face a particularly hostile climate in the Central Bucks School District is contrary to the evidence. The ACLU's complaint lacks specific incidents of bullying, often misrepresents situations that have occurred, and insults the thousands of teachers and staff who take seriously their commitment to the children who attend these schools.

C. LGBTQ-Focused Student Groups at Each of the School District's Middle and High Schools Offer LGBTQ Students and Others Space to Connect and to Succeed.

Each of the School District's middle and high schools has an active student group dedicated to LGBTQ students.³⁹ On average, about 10 to 25 students participate in these student groups at each school, which meet on a weekly or monthly basis, depending on the group, and offer LGBTQ students an opportunity to socialize and to organize activities, such as field trips.⁴⁰ For example, in February 2022, the moderators of the District's gay-straight alliance clubs arranged "another lgbtq social" for March 18, 2022, at the Mercer Museum in the Borough of

³⁹ The student groups go by different names at different schools, including, "Gay Straight Alliance," "Sexuality and Gender Alliance," "PRISM," "Unity," and "Diversity Club." Unity, which is at Tamanend Middle School, and Diversity Club, which is at Tohickon Middle School, have somewhat broader mandates, including both LGBTQ issues and diversity-related concerns generally.

⁴⁰ At the elementary school level, there are no LGBTQ student groups (or any student groups, for that matter). Many (though not all) of the elementary school principals we interviewed were not aware of any students who identified as LGBTQ.

Doylestown, followed by an “ice-cream/candy social at Evolutions in Doylestown.” 2/8/2022 E-Mail Message Among Faculty Advisors [Ex. 91]; [*see also* Ex. 92 (event flyer)]. The field trip was approved by Assistant Superintendent Malone and the principals for the District’s middle and high schools, and 30 students from all three high schools and four of the District’s five middle schools attended.

This field trip exemplifies the types of social and educational opportunities the School District offers, and has for years been offering, its LGBTQ students. As several interviewees pointed out, the School District has been “ahead of the curve” in creating a welcoming environment for LGBTQ students, including by hosting LGBTQ-supportive events as far back as 2008. This remains true to the present, as the School District, through the current Board of School Directors, has interpreted Title IX to protect students and staff from discrimination on the basis of “sexual orientation.” *See* Board Policy 104.

D. School Building Principals and Other Staff Respond Appropriately to Allegations of Bullying or Harassment of LGBTQ Students, Although Many Principals Have Not Received Any Such Allegations.

During our investigation, we interviewed personnel at each of the School District’s 23 schools, including each building principal. We learned from our interviews that each principal is aware of and follows District policies for reporting and addressing alleged bullying and harassment, including in particular Board Policy 218. Principals with whom we spoke confirmed that Board Policy 218 requires administrator involvement when harassment or repeated bullying occurs. These principals also confirmed that teachers are made aware of these policies, including at beginning-of-school-year faculty meetings. The School District’s

approach to bullying and harassment is plainly set forth in the Board Policy 218 discipline matrix, which has been included in student handbooks and District calendars for years. When presented with Mr. Burgess’s dossier, the principals left no doubt that teachers within the School District would be well aware that such allegations must be reported to a building administrator.

Given their responsibility for student discipline, and as one elementary school principal told us during her interview, if there were a hostile environment for LGBTQ students in the School District, the principals “would be aware of it.” Yet none of the principals we interviewed was aware of any incident of LGBTQ bullying or harassment that was reported to the administration but not addressed. At many of the District’s schools, the principals were not aware of any allegations of an LGBTQ student being bullied or harassed at all. Several principals informed us that the LGBTQ students at their respective schools are well-received and well-adjusted—as one principal told us during his interview, LGBTQ identity “doesn’t have the same stigma” that it did years ago. Moreover, all but one of the principals we interviewed told us that they do not have any concerns about the climate for LGBTQ students in their school and that they are not aware of any incidents causing a hostile environment for these students. Our review of disciplinary records and internal District communications corroborates this.

The lone principal who stated during his interview that he believes LGBTQ students in the District are experiencing a hostile environment, Joseph Brereton, of Barclay Elementary School, told us that he has not witnessed or been made aware

of any bullying or harassment incidents involving LGBTQ students. Rather, he disagreed with certain School District policies that he believed are causing a hostile environment for LGBTQ students in the School District. These policies will be discussed in more detail as part of Factual Finding IV.

1. *Reported Incidents of LGBTQ Bullying Are Promptly Investigated and Addressed.*

The view shared by the vast majority of the School District principals that LGBTQ students are not suffering from a hostile environment is supported by our findings as to how District administrators responded when allegations of LGBTQ harassment or bullying did in fact arise. For instance, during the 2021–2022 school year, former students at Holicong Middle School who had advanced to Central Bucks High School East circulated a petition on Change.org alleging that LGBTQ students at Holicong Middle School were being bullied without consequence.

Homophobia and Bullying in Central Bucks Holicong Middle School, Change.org (undated), available at <https://www.change.org/p/principal-keven-schillingford-homophobia-and-bullying-in-central-bucks-holicong-middle-school/c> [Ex. 93]. The petition attracted more than 1,000 signatures (which is more than the student population at Holicong) and prompted a meeting between the petitioners and the District’s Superintendent, Dr. Lucabaugh. According to a comment posted by the student who started the petition, Dr. Lucabaugh “was very kind and listened to our problems and what we would like to see be done in CBSD as a whole.” *Id.*

The petitioners also met with Holicong’s principal, Kevin Shillingford, Ed.D., the school’s GSA faculty advisor, Keith Willard, and one of the school’s guidance

counselors to discuss their concerns. Mr. Willard posted a comment to the petition encouraging these students to raise their concerns to Dr. Shillingford, whom he described as “on your side—he’s a good man and definitely cares about you.” *Id.* During our investigation, we interviewed Mr. Willard, who told us that he was not aware of any reported and unaddressed LGBTQ-related bullying in the School District and that he had no opinion on whether there was a hostile environment for LGBTQ students in the School District.

Dr. Shillingford told us that the petitioners had not contacted him or Mr. Willard before circulating the petition. Dr. Shillingford also contacted the parents of the student who started the petition, who told Dr. Shillingford that their child had not brought these concerns to their attention. Dr. Shillingford recalled that the student who started the petition had based her concerns, not on any specific incident, but rather on information she received from a Holicong student who rode the same bus. During their meeting, Dr. Shillingford recalled that the students raised generalized concerns about other students (particularly seventh graders) making unkind comments in the hallway. Because of the generalized nature of their complaints, Dr. Shillingford could not administer disciplinary consequences to any students, although he did hold a meeting, open to all students, to discuss bullying concerns at Holicong.

During our investigation, we learned of a separate incident of conflict involving a group of LGBTQ students at Central Bucks High School West, the response to which further exemplifies how principals and administrators in the

School District respond to these incidents when they arise. The incident occurred at the start of the 2022–2023 school year when some of the school’s SAGA students, who were presenting at the student activities fair, were confronted by another group of students, one of whom was wearing a “Let’s Go Brandon” shirt and who said “let’s go, Brandon,” in an aggressive manner to one of the SAGA students.⁴¹

One of the SAGA students reported the incident to SAGA’s faculty advisor at Central Bucks West, Catherine Rosselli, who immediately contacted building security and Lyndell Davis, the principal at Central Bucks West. Mr. Davis’s administration promptly pulled camera footage, identified the students involved, and spoke with the students who had initiated the confrontation with the SAGA students about the school’s expectations for student behavior, why their behavior was inappropriate, and the consequences for bullying. Mrs. Rosselli subsequently spoke with the SAGA students, who expressed satisfaction with the administration’s response. For her part, Mrs. Rosselli was also satisfied with the level of discipline that was imposed because the students who had initiated the confrontation took responsibility for their actions.

We find this sequence of events exemplifies how the School District responds to peer-on-peer conflict involving LGBTQ students—the reports are promptly investigated, and responsible students are administered appropriate, proportional

⁴¹ “Let’s go Brandon” is a slogan used to criticize President Biden. Colleen Long, *How ‘Let’s Go Brandon’ Became Code for Insulting Joe Biden*, AP News (Oct. 30, 2021), <http://apnews.com/article/lets-go-brandon-what-does-it-mean-republicans-joe-biden-ab13db212067928455a3dba07756a160>.

disciplinary consequences. Mrs. Rosselli told us during her interview that she does not feel that there is a hostile environment for LGBTQ students at Central Bucks West, and that she has not directly observed any bullying or harassment of LGBTQ students.

Other examples of how the District addresses such incidents—including responses by Mrs. Saullo and Mrs. Dowd at Lenape Middle School—are addressed elsewhere in this report and will not be repeated here. Both witness interviews and the documentary record confirm that instances of LGBTQ-related bullying or harassment are uncommon in the District, but, when they arise and are brought to the attention of school personnel, are promptly and appropriately addressed.

2. *The Lone Title IX Complaint Filed with the School District Alleging Sexual Orientation–Based Discrimination Was Promptly Investigated and Appropriately Addressed, According to the Complainant and His Mother.*

Since the beginning of the 2020–2021 school year, there has only been one Title IX complaint relating to alleged sexual orientation discrimination filed with the School District.⁴² We spoke with the Title IX Coordinator involved in the complaint, Ms. Marton, the appointed investigator, Dr. Watters (the principal of Central Bucks East where the incident occurred), and the mother of the student who filed the report, Student 12. We also contacted the mother of another student identified in the complaint, Student 13, but she did not return our call. Based on

⁴² Two other Title IX complaints were filed and investigated during the relevant time period. However, those complaints involved allegations of sexual harassment and sex-based discrimination unrelated to LGBTQ identity, and therefore are not discussed here.

our review, we find that the School District has a well-functioning Title IX complaint process that facilitates prompt investigation of complaints and appropriate, proportional disciplinary consequences.

a. *Summary of the Title IX Complaint.*

On October 17, 2022, Student 12 filed a Title IX complaint using the School District's complaint form. In the complaint, Student 12 alleged that he and his friends experienced sexual orientation-based discrimination. The complaint description reads as follows:

[Student 12] reports: On Friday 10/14/22, my friends and I at the lunch table in the CB East Atrium were subject to having food thrown at us, threats of physical violence and intimidation, insults and even slurs. We did not know or interact with this group before this incident. It occurred during the second block of lunch and learn.

Additional details as reported by [Student 12] to hi[s] parents [Student 12's Parents]: From what [Student 12] has told us, the slurs included sexual orientation discrimination . . . [Student 12] has told us that the same group of students has harrassed [sic] his friends before, including one friend, [Student 13], who is a member of the LGBTQ community. This speaks to a pattern of discriminatory behavior. However, 10/14/22 was the first time that [Student 12] and his friends asked the aggressors to stop. The threats of physical violence resulted from the request to stop the harrassment [sic].

[Ex. 95.] In addition to filing the Title IX complaint, Student 12 reported the incident to the Central Bucks East principal, Dr. Watters, as well as the Class of 2023's house principal and the guidance office. The District's investigation findings were communicated to Student 12 and his parents via e-mail three days after the complaint was filed.

b. *The School District's Investigation and Resolution of the Title IX Complaint.*

Dr. Watters conducted a thorough investigation that included obtaining and reviewing video evidence and interviewing multiple witnesses. [Ex. 96.] The video evidence and witnesses corroborated the use of a slur, and the student who used the slur, Student 14, accepted responsibility for his actions, recognized that such language is offensive, and authored a written apology to Student 12. A written record of the account was placed in Student 14's file, and his parents were notified, who were "appalled by what occurred" and supported the school's actions. Significantly, after meeting with Dr. Watters to review the investigation findings, the apology, and "other follow up he felt might be needed," Student 12 "expressed satisfaction with the investigation, the way it was addressed, and the resolution," and consented to closing the investigation.

For her part, Student 12's mother called the School District's resolution "sensible and helpfully specific" and further wrote to Dr. Watters and Ms. Marton: "Thank you for responding so quickly to this incident. I appreciate your active commitment to JEDI values of justice, equity, diversity, and inclusion." It was precisely this kind of "sensible" approach, infused with the values of "justice, equity, diversity, and inclusion," that Mr. Burgess obstructed in covering up allegations of harassment and convincing Student 1 and his mother not to report such allegations to the School District.

In a conversation about her experience with the District's Title IX complaint process, Student 12's mother told us that her son has not made her aware of

subsequent bullying incidents with the group of students (or any other students), and so, in that sense, the complaint “did what it was intended to do.”

Put simply, the lone sexual orientation–related Title IX complaint evidences that the School District administration promptly investigates and addresses allegations of harassment, communicates with complainants and alleged perpetrators, and arrives at appropriate resolutions, acceptable to those involved. In that case, only three days elapsed from report to conclusion, which demonstrates the priority the District places on such matters.

3. *The Behavior Data Contained in the School District’s Electronic Databases Do Not Support a Finding of Widespread Bullying or Harassment of the District’s LGBTQ Students.*

As part of our investigation, we reviewed over 123,000 pages of documents and electronic records, including behavior-related electronic data contained on various District databases. These databases included Infinite Campus (“IC”), the District’s central electronic database (which, in addition to student education records, contains disciplinary files), as well as the SWPBIS-BDR system that was piloted at Lenape and other middle and elementary schools and is now in place at one of the District’s elementary schools, Cold Spring Elementary, and all of the District’s middle schools. We also reviewed anonymous “tips” filed with the Pennsylvania Office of Attorney General pursuant to the State’s “Safe2Say” program.

a. *Summary of Data Contained in IC.*

Many schools in the District use IC to log student disciplinary files. Each incident logged in IC is categorized according to the nature of the infraction,

ranging from minor infractions such as unexcused absences and violations of school mobile telephone policies, to more serious ones such as fighting and possession of a controlled substance. Each incident logged in IC includes the following data: the date of the incident, the school, the students involved, those students' ethnicities, grade levels, and gender, a description of the incident, as well as the resolution taken and the date it is administered, among other items.

We reviewed the incidents logged in IC as sex-based offenses (including sexual harassment), harassment, and bullying for each of the School District's schools. There were 53 such incidents logged from the 2019–2020 school year through the date we collected the data in January 2023. The bullying and harassment incidents logged in IC occurred at all three of the District's high schools, all five of the middle schools, and five of the fifteen elementary schools. According to the IC records, school administrators responded to each incident, with disciplinary consequences ranging from a warning to out-of-school suspensions. Based on our review of the incident descriptions, there is no evidence on the face of the descriptions that any of these incidents involved bullying or harassment of LGBTQ students.

However, in our view, the data collected from IC is of limited utility for a number of reasons. First, it is possible, particularly for conduct short of actual bullying (as that term is defined in state law and Board Policy 249), such as name-calling or other forms of interpersonal student conflict, that the incidents were not

logged in IC.⁴³ For that reason, as discussed above, we spoke with personnel from each of the District’s 23 schools to make sure we uncovered incidents of student conflict that were not recorded as part of a student’s permanent disciplinary record, but that might be relevant to our investigation. Further, it is possible that some of these incidents involved LGBTQ students, but that such information was not made known to the teacher who entered the information into IC (or that the teacher knew but did not enter the information into IC), such that it does not appear in the description of the event in IC.

One incident in particular caught our attention that occurred at Lenape on May 23, 2022, involved Student 5 repeatedly making “threatening and harassing comments to a student coming back from a mental health occurrence,” for which Student 5 received a ten-day out-of-school suspension. Given our investigation’s findings concerning Student 5’s harassment and bullying of students at Lenape during the spring of 2022, we spoke with Mrs. Saullo and confirmed that the student-victim involved in this incident did not identify as LGBTQ. But the point

⁴³ Out of an abundance of caution, because bullying or harassment incidents involving LGBTQ students might have been categorized under a different behavior event, we also reviewed incidents categorized as “Disruptive Behavior,” “Inappropriate Language/Gestures/Conversation,” “Other Misconduct,” and “Simple Assault on Student.” There were more than 1,000 incidents logged under these categories from the 2019–2020 school year through the date we collected the data. In these additional IC records, we did not find further incidents of harassment or bullying of LGBTQ students. However, we did identify 30 discrete incidents involving inappropriate comments concerning LGBTQ students or issues. These incidents were logged at two of the three District high schools and four of the five District middle schools. According to the data we reviewed, school administrators promptly responded to each of the incidents, with disciplinary consequences ranging from warnings to out-of-school suspensions.

remains that some of these incidents may involve LGBTQ students, even when this information is not evident from the face of the incident description. Thus, we looked to other sources of data, as well, and did not overly rely on data contained in IC.

b. *Summary of SWPBIS-BDR Data.*

With respect to SWPBIS-BDR reports, we reviewed the reports filed at each of the District schools that collected behavior data under the SWPBIS program during the relevant time period—Lenape, Tamanend, and Holicong middle schools and Cold Spring Elementary School. Each incident logged in the SWPBIS-BDR system is categorized as either a “Major” or “Minor” incident and is further categorized according to the nature of the infraction. To that end, and similar to IC, the SWPBIS-BDR system includes behavior events for various infractions, including for “Harassment,” which, as discussed above, is a “Major” incident, as well other misconduct, ranging from “Bullying,” “Physical Aggression,” and “Abusive Language/Inappropriate Language/Profanity,” to “Tard[iness]” and “Technology Violation[s].”⁴⁴ Each incident logged in the SWPBIS-BDR system includes the following data: the date, time, and location of the incident, the identities of the reporting staff member and offending student, the offending student’s ethnicity,

⁴⁴ Some behavior events, such as Physical Aggression, can be logged as Minor or Major, depending on the severity of the incident. The behavior event for “Bullying” is not used outside of Cold Spring and Lenape.

grade level, and gender, as well as a description of the incident⁴⁵ and the disciplinary actions taken in response, among other items.

We reviewed all of the incidents logged in SWPBIS-BDR for each of the schools piloting the program.⁴⁶ At Tamanend, there were 611 reports during the 2021–2022 school year (including 23 Major Harassment incidents), and 85 reports from the beginning of the 2022–2023 school year to the date we collected the data (with two Major Harassment incidents). At Holicong, there were 63 reports during the 2021–2022 school year, none of which was a Major Harassment incident.⁴⁷ At Lenape, there were 63 incidents during the 2020–2021 school year,⁴⁸ and 711 during the 2021–2022 school year, including, altogether for both school years, eight Major Harassment incidents and eight Major Bullying incidents. There have been 326 reports, including two Major Harassment incidents and one Major Bullying incident, at Lenape from the beginning of the 2022–2023 school year to the date we collected the data. Last, with respect to Cold Spring, there have been 15 reports filed from the beginning of the 2021–2022 school year through the date we collected

⁴⁵ At Cold Spring, the SWPBIS-BDR reports we collected did not contain incident descriptions.

⁴⁶ At Lenape, when a BDR is filed, the reporting teacher and certain administrators receive an auto-generated e-mail that contains the substance of the report and can be forwarded to the offending student’s parents or guardians where appropriate.

⁴⁷ For the 2022–2023 school year, Holicong has logged its behavior data on IC; there have been no incidents logged as harassment on IC from the beginning of that school year to the date we collected the data.

⁴⁸ Lenape staff began using the SWPBIS-BDR system for the 2020–2021 school year.

the data during the 2022–2023 school year. Of the 15 reports, nine were for bullying or harassment.

The vast majority of these nearly 1,900 incidents logged in the SWPBIS-BDR system do not involve bullying or harassment, let alone bullying or harassment of LGBTQ students. Rather, most of the incidents involved other types of student misconduct, such as classroom disruption, technology violations (often involving inappropriate mobile telephone use), and tardiness. Moreover, according to the incident descriptions we reviewed, many of the incidents logged as “Harassment” did not involve LGBTQ students. For example, while there were 23 Major Harassment incidents logged at Tamanend during the 2021–2022 school year, according to the incident descriptions, none involved an LGBTQ student.

For reasons similar to those stated above, however, the SWPBIS-BDR data have their limits. For example, it is possible that some of the Major Harassment incidents did in fact involve LGBTQ students, but that the student-victim’s LGBTQ status was not known to the reporting teacher or otherwise was not provided in the incident description. Lastly, there were no incident descriptions for the Cold Spring SWPBIS-BDR reports. For that reason, we spoke with Cold Spring’s principal and asked about any bullying or harassment incidents involving LGBTQ students.

Notwithstanding these limitations, our review of the SWPBIS-BDR data brought to light a small number of LGBTQ bullying and harassments incidents at Lenape in the last three years. In particular, there were a total of three Major Harassment BDRs filed in response to LGBTQ bullying or harassment, all of which

involved Student 5 and are discussed in Factual Finding I. There were also two Inappropriate Language BDRs that involved student use of an LGBTQ slur. According to the data, as well as contemporaneous e-mail messages, the Lenape administration addressed each reported incident, including with disciplinary consequences, where appropriate.

c. *Summary of Safe2Say Tips.*

We also reviewed “tips” filed anonymously with the Pennsylvania Office of Attorney General’s “Safe2Say” program. Safe2Say, which was established by the Pennsylvania General Assembly, was put in place for good reason: recognizing that “school shootings have become more frequent” over the past several years, the Commonwealth found that “robust information sharing and communication between schools and law enforcement” was “necessary to prevent school violence.” Act of June 22, 2018, P.L. 327, 24 P.S. § 13-1301-D(1).

Accordingly, Safe2Say provides an “anonymous reporting mechanism” focused on reporting “behavior perceived to be threatening to an individual or a school entity,” such as a “Planned Attack/Fight/Assault” or “Drug Distribution/Possession,” but also “Bullying/Cyberbullying,” “Hate Crime/Hate Speech/Discrimination,” and “Harassment/Intimidation.” *Id.* at § 13-1301-D(3).⁴⁹

⁴⁹ The phrases describing behaviors subject to Safe2Say reporting are “Concern/Event Types” taken from the Safe2Say online tip portal. Some of the categories (*e.g.*, “Hate Speech”) potentially describe speech that is protected by First Amendment to the U.S. Constitution. *See, e.g., Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 (3d Cir. 2001) (“There is no categorical ‘harassment exception’ to the First Amendment’s free speech clause.”). Thus, the School District could not, under well-established law, prohibit speech merely because it offends or because it is directed at a personal characteristic or that of a protected class. *See id.* at 215

School District administrators receive by e-mail Safe2Say tips that are submitted for conduct occurring at their school. As such, Safe2Say is yet another mechanism by which students or others can report potential and actual misconduct affecting school districts throughout the Commonwealth.

We spoke to School District administrators, who confirmed that they do from time to time receive Safe2Say tips and have a process for reviewing and responding to them. We also reviewed the relevant tips and confirmed that administrators responded appropriately.

Notably, Ms. Pray told us during her interview that she believed she filed Safe2Say tips to report incidents involving a student she refused to name, but whom we presume is Student 1.

[REDACTED]

(“No one would suggest that a school could constitutionally ban ‘any unwelcome verbal . . . conduct which offends . . . an individual because of’ some enumerated personal characteristics.”).

The facts do not support what Ms. Pray told us. Rather, they demonstrate that school administrators appropriately respond to reports of bullying or harassment, including those submitted through Safe2Say.

d. *Community Survey.*

Lastly, we requested that the School District post to its Web site a “Community Survey” to allow community members and District students to provide any information that they might have concerning bullying or harassment of LGBTQ students. We did not receive any responses to the survey.

E. Our Investigation Did Not Substantiate Generalized Concerns about the Lenape Administration’s Response to Alleged LGBTQ Harassment or Bullying, Which Lacked Specificity and Were Contradicted by Other Evidence Discovered During our Investigation.

During our investigation, Mr. Burgess and Ms. Gluck told us that they believed (or could not rule out) that the Lenape administration does not appropriately respond to anti-LGBTQ bullying or harassment incidents. We could not substantiate these generalized concerns, which we found not credible for a number of reasons. As discussed above, Mr. Burgess (and, to some extent, Ms. Gluck) acted against the interests of Lenape’s LGBTQ students to further their own aims. More to the point, the generalized concerns described by Mr. Burgess and Ms. Gluck are contradicted by the specific facts unearthed during our investigation.

1. *The Generalized Concerns Are Contradicted by Facts Discovered During Our Investigation about How the Lenape Administration Responded to Alleged LGBTQ Bullying or Harassment.*

We interviewed 15 current or former teachers, guidance counselors, administrators, and parents at Lenape Middle School. We think it is useful to focus

on those Lenape staff members who took a more negative view of whether the administration adequately addressed allegations of LGBTQ-related bullying. As noted above, we did hear complaints from a handful of staff members about School District policies—in particular, the classroom neutrality policy and the policies related to books and classroom materials, which will be discussed in more detail, below, as part of Factual Finding IV.⁵⁰ We also heard concerns that Lenape’s SWPBIS-BDR system, while useful in reporting misbehavior, was not consistently used to keep teachers in the loop about the consequences of such misbehavior. Further, although we heard about a small number of specific instances of alleged LGBTQ bullying, most staff members who expressed a concern about bullying did so in a generalized fashion, without being able to provide any specifics.

As noted earlier in this report, where there were specific allegations, the facts (including as documented in contemporaneous records) confirmed that Lenape Middle School took any allegations of bullying seriously and promptly addressed them. In performing this investigation, we were focused on facts and evidence—and not generalized, nonspecific claims of a hostile environment. We found that, when bullying or other conduct directed at LGBTQ students occurred at Lenape, teachers, guidance counselors, and administrators promptly and appropriately addressed it. Examples of this have been discussed previously and are documented in the

⁵⁰ These are codified at *Board Policy 321: Partisan, Political, or Social Policy Advocacy Activities* [hereinafter, “Board Policy 321”] [Ex. 97], *Board Policy 109.1: Age-Appropriate Standards Applicable to Policy 108–Textbooks and Policy 109–Resource Materials* [hereinafter, “Board Policy 109.1”] [Ex. 98], and *Board Policy 109.2: Library Resource Materials* [hereinafter, “Board Policy 109.2”] [Ex. 99].

exhibits that accompany this report. For instance, Mrs. Saullo promptly addressed the bulletin board vandalism, and Mrs. Dowd handled the discipline of “Student 5,” to which Ms. Gluck replied, “Merci!”

In addition, Mrs. Saullo proactively contacted Lenape staff regarding her concern for Student 1, and she and her staff held multiple counseling sessions with Student 1 during the spring of 2022. In fact, the Lenape administration had already disciplined a student who threw food at Student 1 in the cafeteria in December 2021, after administrators received a call from Student 1’s mother. [Ex. 50.] Likewise, Mrs. Dowd responded promptly and appropriately to the BDRs she received, as Mr. Burgess himself acknowledged on multiple occasions. Put simply, claims that the administration (and, in particular, Mrs. Saullo and Mrs. Dowd) were not appropriately responsive to allegations of bullying are not supported by the facts.

We also note that other Lenape staff told us that they did not have any concerns regarding the school administration’s response to reports of harassment or bullying of LGBTQ students. Many were not aware of any bullying or harassment incidents involving any LGBTQ students. This further corroborates our finding that LGBTQ-related bullying is not pervasive at Lenape, and, when it occurs, it is properly addressed.

Some of the claims cited as evidence of a hostile environment did not support such a conclusion. For example, Christy Venters, a Lenape teacher, told us that

following a “No Place for Hate”⁵¹ lesson, some students asked for a meeting with the administration to discuss incidents of supposed LGBTQ bullying or harassment. Ms. Venters cited this request as evidence of a hostile environment. But she acknowledged that Mrs. Saullo did in fact arrange a meeting with the students to address any concerns and that only one of the students, Student 15, chose to attend.

2. *The Alleged Incidents Lack Specificity.*

In commissioning our investigation, the School District committed to getting to the bottom of allegations that LGBTQ students are experiencing a hostile environment as a result of reported yet unaddressed bullying and harassment. Thus, when certain Lenape Middle School teachers told us that they believed (or could not rule out) that the school administration failed to respond appropriately to reports of bullying or harassment of Lenape’s LGBTQ students, we pressed for details in order to provide the District with the information necessary to remedy any such harassment. But time and again during our interviews, these teachers could not provide sufficient details (or any details at all) concerning such incidents.

An example is Ms. Gluck, who told us about concerns voiced at the early 2022 SAGA meeting. But, as discussed earlier, these concerns were stated only in the most general terms, and, in any event, one of the alleged student “ring-leaders” identified by Ms. Gluck, Student 5, was held accountable for his misbehavior.

Ms. Venters told us during her interview that she reported allegations of bullying to the Lenape administration that were not adequately addressed.

⁵¹ “No Place for Hate” is a program associated with the Anti-Defamation League.

Specifically, in April or May 2022, two students approached her and told her that they were being harassed at lunch by a particular student. Ms. Venters did not witness the incident, declined to disclose the students' names, and could not even tell us whether the students identified as LGBTQ. Nevertheless, the timing of the incident as well as her description of it are highly similar to the description contained in the BDR that Ms. Gluck filed concerning a cafeteria incident involving two students from SAGA and Student 5. [Ex. 64.] Lenape's BDR data indicates that this incident resulted in discipline for Student 5.

During his interview under oath, Mr. Burgess could not identify any instance of reported and unaddressed bullying, discrimination, or harassment of an LGBTQ student anywhere in the School District. Although he did discuss a prior "deadnaming" incident involving Student 1 from 2021, he also admitted that the issue was addressed by a guidance counselor and that he did not follow up to determine whether any further steps were taken to address the situation.

According to our interviews, District students also at times made generalized allegations without sufficient information to enable administrators to respond. For instance, during his interview, Dr. Shillingford told us that a Holicong student reported at a recent GSA meeting that "someone said something to somebody that was homophobic." The student did not provide the alleged perpetrator's name or what that student said. Dr. Shillingford addressed the situation with Kristy Trammel, the co-faculty advisor to Holicong's GSA, and Ms. Trammel spoke to her

group about the importance of there being some first-hand evidence of bullying or harassment before reporting it.

The ACLU's complaint and OCR's investigation are also lacking in specifics. Despite the fact that the complaint was filed over six months ago, and OCR has been investigating for at least as long, neither the ACLU nor OCR has identified a single student who allegedly was bullied. The few specific allegations that are unredacted in the complaint are unsupported by the evidence, as discussed in more detail above. Tellingly, the "Remedy Sought" section of the ACLU's complaint says nothing about assistance for individual students. Rather, the ACLU asks OCR to order the School District to rescind the policies about which the ACLU complains and to order the School District to implement other policies of which the ACLU approves, as well as "mandatory training" on a variety of subjects.⁵²

3. *Staff Concern for Lack of Notice Regarding Student Referrals.*

Certain Lenape staff members complained that school administrators did not notify them of the consequences stemming from student disciplinary referrals that they had made. We do not doubt the point made by these teachers, specifically that communication between administrators and teachers could be improved. In our view, some of the "perception" of unaddressed bullying was attributable to teachers just not knowing what came from the disciplinary referrals that they had made.

We do not attribute the perception that information was not communicated back to teachers to any intentional act by school administrators. Indeed, Mrs.

⁵² As it happens, OCR has no power to order such things.

Saullo and Mrs. Dowd were attentive to the issue, and the records we reviewed showed that they promptly communicated such matters to teachers. Rather, we think the issue is attributable to the School District's current patchwork of disciplinary referral systems. Some witnesses also spoke about the "clunky" nature of IC. The vast majority of teachers, guidance counselors, and administrators are acting in good faith to manage student discipline issues. We think they would be assisted by the District exploring the capabilities of its electronic discipline records systems to improve notification to teachers.

F. The ACLU's Claims about CB Cares Educational Foundation Are Unfounded.

The ACLU complaint alleges that the School District's decision to cut ties with the CB Cares Educational Foundation ("CB Cares") was wrongful and motivated by anti-LGBTQ bias. OCR served a document request on the School District seeking documents about the District's "relationship or interactions with CB Cares" going back to the 2020–2021 school year.

At the outset, it is important to explain the purpose that an educational foundation plays in a public school district. In the simplest terms, its purpose is to raise money for programs or activities above and beyond what is provided in the school district's budget. By that measure, CB Cares did a poor job. According to its most recently available Form 990, CB Cares received \$176,491 in contributions and grants for the then current year but awarded only \$15,151 in grants. By contrast, it paid \$111,950 in salaries, other compensation, and employee benefits, including \$85,764 to Executive Director Kimberly Cambra. CB Cares Educational

Foundation, Form 990 (2019) [Ex. 100]. That salaries and compensation outpaced actual grants by a factor of more than seven-to-one corroborates what the School District administration told us—that the District cut ties with CB Cares because it was not succeeding in the traditional role of an educational foundation and because the School District wanted to partner with one that would focus on larger scale grants.⁵³

The ACLU claims that “[p]ublicly, CBSD did not explicitly admit that it was severing ties from CB Cares,” but this is untrue. ACLU Administrative Complaint at 61 [Ex. 20]. Superintendent Lucabaugh announced that the District’s decision to form a new foundation was due to, among other things, the fact that CB Cares “was not founded with the purpose of being a large-scale grant funding organization,” and the District wanted to partner with an educational foundation that would better perform that role. [Ex. 103.] CB Cares’s board president, Phil Ehlinger, understood that the School District was explicitly cutting ties and gave press interviews complaining about the move.⁵⁴

⁵³ By contrast, the North Penn School District Educational Foundation, for the same year, awarded grants totaling \$114,632 and paid no salaries. See North Penn School District Educational Foundation, Form 990 (2019) [Ex. 101]; see also, e.g., Foundation for Wallingford-Swarthmore Schools, Form 990 (2019) [Ex. 102] (reflecting no salaries paid).

⁵⁴ See, e.g., Chris Ullery, *CB Cares Fights for Its Future As Central Bucks Cuts Ties. What’s Next for the Nonprofit?*, Bucks Cnty. Courier Times (June 6, 2022), <https://www.phillyburbs.com/story/news/local/2022/06/07/central-bucks-cb-cares-woke-pa-education-cuts-ties/65358737007> [Ex. 103]. Notably, even the newspaper headline recognizes that the School District “cut ties” with CB Cares.

Further, Mr. Ehlinger identified other factors that made the relationship between the School District and CB Cares “untenable.” *Id.* For instance, Mr. Ehlinger pointed to CB Cares’s involvement in a highly publicized delivery of face masks to the School District in January 2022 as a possible “tipping point” in the relationship.⁵⁵ This came just after the November 2021 Municipal Election, when a new six-to-three Republican majority was elected, which had campaigned on removing pandemic restrictions and returning schools to normal operations. Mr. Ehlinger understood that the School District was entitled to work with an educational foundation that wasn’t involved in activities at cross-purposes with School District policy.⁵⁶

The ACLU’s allegations about CB Cares are beside the point. The Superintendent and the School Board—not the ACLU or OCR—get to decide with which outside organizations the School District partners. Further, none of the ACLU’s allegations about CB Cares has anything to do with alleged bullying or harassment of a District student.

⁵⁵ See *id.*; see also Chris Ullery, *Central Bucks Parents Lead Effort to Distribute 2,300 Masks to District Teachers, Support Staff*, Bucks Cnty. Courier Times (Jan. 31, 2022), <https://www.phillyburbs.com/story/news/2022/02/01/central-bucks-teachers-staff-get-masks-local-donations/6634591001> [Ex. 104] (“The nonprofit CB Cares Educational Foundation became an instrumental part of the drive with executive director Kimberly Cambra helping to sort and pack hundreds of masks for deliveries over the last two weeks.”).

⁵⁶ Indeed, Board Policy 913.2 gives the Superintendent and School Board authority over such matters. *Board Policy 913.2: Sponsorships and Partnerships* [Ex. 105]. The Policy goes on to state that “Sponsorship/Partnership involvement must not conflict with the goals and objectives of the schools.” *Id.*

* * * * *

We thoroughly investigated the allegations of widespread bullying and harassment of LGBTQ students in the District and found them to be untrue. We interviewed 45 individuals and reviewed over 123,000 pages of documents, as well as voluminous electronic records, and what we found was a School District that takes seriously its responsibility to educate the students in its schools, free from bullying, harassment, or discrimination. In most of the District's schools, LGBTQ-related bullying is virtually nonexistent. Where it does exist, it is not pervasive and, in any event, is swiftly and appropriately addressed.

The ACLU and OCR made our investigation as expensive and time-consuming as possible for the School District by refusing even to inform the District of the specific allegations. This investigation would have been far more straightforward had the ACLU and OCR simply informed the School District of the identities of the ACLU's "clients" and shared their "stories," as the redacted complaint puts it. We could have focused on their circumstances and addressed the allegations. Instead, the ACLU's and OCR's secrecy necessitated a districtwide investigation of a School District of 18,000 students, all over anonymous, undisclosed allegations about a few unnamed "clients."

Based on our investigation, it is fair to conclude that the reason the ACLU and OCR were not forthcoming with this information was because the allegations are not supported by the evidence. When we were able to figure out the identities of the individuals behind the redactions, the allegations did not stand up to scrutiny.

Examples include the ACLU's false allegations that Mr. Burgess wasn't obligated to report Student 1's allegations to the School District (during our investigation, he admitted he was) or that Mr. Burgess didn't realize that he needed to submit a BDR (in fact, he was an expert with the SWPBIS-BDR system) or that, in filing the OCR complaint, Mr. Burgess was respecting Student's 1 mother's wishes (in reality, she expressed reservations about OCR). The ACLU's allegations about Student 1 himself are also false—he was manipulated by Mr. Burgess, who put Student 1 in danger by violating his duties as a teacher and withholding bullying allegations from the school administration.

In the final section of this report, we address below the District policies at issue that prompted the ACLU complaint and the four OCR complaint letters sent to the District.

IV. The School District's Policies Are Lawful and Reasonable.

All of the complaint letters that the District received from OCR are directly or indirectly related to the various formal or informal policies adopted by the School District or under consideration by the District, but the September 23, 2022, complaint letter focuses solely on the policies—specifically, the School District's classroom neutrality policy, the policy requiring parent or guardian approval for student name changes, the District's policies on acceptable classroom and library materials, and the District's practice of dividing elementary-school sexuality classes into separate sections for boys and girls.

As with OCR's other complaints, OCR did not give us the actual complaint associated with the September 23 complaint letter, but rather only a summary of

the complaint and multiple document requests calling for information going back for years. OCR also refused to give us the name of the complainant (or complainants). However, during our investigation, we discovered a July 11, 2022, e-mail message from School Board Member Smith to Secretary Cardona and OCR Head Lhamon, complaining about the same policies that OCR ended up citing in its September 23 complaint letter. *Compare 7/11/2022 E-Mail Message from Karen Smith to OCR [Ex. 29], with 9/23/2022 Letter from Catherine C. Deneke to Abram M. Lucabaugh, Ed.D. [Ex. 28].* It is evident that OCR's September 23 complaint letter was based, at least in part, on Ms. Smith's July 11 e-mail.

Ms. Smith never publicly disclosed her July 11 e-mail. For instance, at the November 2022 School Board meeting—at which the Board authorized Duane Morris's independent investigation—Ms. Smith did not disclose that she was one of the individuals who complained to OCR, even as she was speaking out against authorizing the independent investigation. At the meeting Ms. Smith said, "I can't approve spending what is likely to be tens of thousands of additional taxpayer funds to defend this legal action which so easily could have been avoided." Ms. Smith chose not to disclose that she was among the complainants who had instigated the "legal action." At a minimum, Ms. Smith should have been honest with the Board and the public. She was not.

Ms. Smith's e-mail to Secretary Cardona and OCR Head Lhamon is explicit. She's upset that she's been outvoted by a "majority of our school board members," and she wants "any support [OCR] is able to give me in fighting these issues." She

points out that “[t]he ACLU of Pennsylvania is also investigating the district.” And she falsely states that the School District “suspend[ed] an exemplary teacher for protecting a transgender student.” Within weeks of receiving Ms. Smith’s e-mail, OCR launched three federal investigations of the School District, relating to the District’s suspension of Mr. Burgess, the policies of which Ms. Smith complained, and the ACLU’s complaint. This then allowed Ms. Smith to criticize the Board majority for causing the District to be under federal investigation and for expending funds on the matter that she had secretly provoked.

Ms. Smith also derived a significant amount of personal notoriety from these circumstances. For example, she has appeared in the *Huffington Post*, which included a large photograph of her.⁵⁷ Also quoted in the article is Mr. Albert, the former Lenape assistant principal who used Ms. Gluck to obtain information from Lenape’s SAGA members. And the article mentions the ACLU’s complaint, which had just been filed with OCR.

The thesis of the *Huffington Post* article is that, during the November 2021 election, “Democratic candidates generally ran on COVID safety, while Republicans candidates bolstered their campaigns by claiming the mantle of ‘parental rights,’” and “[t]he parental rights crowd won out, and the Central Bucks school board became a 6–3 conservative majority.” While Ms. Smith found that shocking, it is

⁵⁷ See generally Nathalie Baptiste, *The Culture War Is Alive and Well in This Pennsylvania School District*, *Huffington Post* (Nov. 2, 2022), https://www.huffpost.com/entry/pennsylvania-culture-wars-books_n_63612d97e4b039b01e1f8fc5 [Ex. 94].

democracy in action. She refused to accept the results of the election and instead surreptitiously instigated a costly federal investigation of the School District, while at the same time chastising the majority members of the Board for investigating the federal allegations.

As discussed below, the policies at issue are lawful and the result of reasoned deliberation. They were adopted following a change in the composition of the School Board after the November 2021 elections. It is impossible to talk about the policy issues here without acknowledging the often political nature of the disagreements on these issues. In this case, the political nature of the disagreements has unfortunately led to the political nature of the federal investigation.

These are policies about which reasonable people can and do disagree. These policies touch upon hot-button political issues that school districts and communities across the country are wrestling with. They are not easily decided, and the community includes stakeholders with widely different views on each of them. The District has arrived at these policy decisions with appropriate consideration—by talking with seasoned educators and other experts, receiving recommendations, and hearing from members of the public.

Ultimately, these issues have been decided the way many difficult issues in this country are decided—by voting. The policies are not at odds with the law, and they were adopted pursuant to legitimate and procedurally appropriate deliberations. Reasonable people can continue to debate the merits of the policies. But the *Policy Allegations* do not merit a federal investigation or intervention.

A. *Policy 321 Is Viewpoint Neutral, Reasonable, and the Legitimate Decision of a Majority of Duly-Elected School Board Members.*

The School District adopted Board Policy 321 in January 2023. *See* Board Policy 321 [Ex. 97]. The Policy aims to ensure that classrooms are a place where “students learn how to think, not what to think.” *Id.* The key concept in Board Policy 321 is “advocacy.” *Id.* Specifically, the policy prohibits School District staff from using assigned work hours to advocate in support of or in opposition to a particular point of view or belief about partisan, political, or social policy issues. *See id.* It also prohibits employees, while on duty, from displaying political signs, circulating petitions, soliciting for funds or volunteers for partisan, political, or social policy issues, or directing students to distribute advocacy materials. *See id.*

Board Policy 321 deals with *employee* advocacy. It does not prohibit curriculum-based classroom discussion of any partisan, political, or social policy issues. Nor does it regulate *student* speech at all. Board Policy 321 reflects the duly-elected School Board’s view that classrooms should be places of neutrality and balance to create an optimal learning environment and atmosphere of inclusiveness where all students are welcome.

The District—as well as most school districts across the Commonwealth—have had some version of a policy regulating partisan activity by employees for years. Responsible boards change policies over time to respond to the needs of the moment and the views of constituents. They do so after hearing from community members, debating the issues, and then voting. That is what happened here.

Nothing about Board Policy 321 violates the legal rights of staff or students. The District has the authority to determine what is and is not taught in classrooms. “[A] teacher’s in-class conduct is not protected speech.” *Borden v. Sch. Dist. of Twp. of E. Brunswick*, 523 F.3d 153, 172 (3d Cir. 2008) (citing *Bradley v. Pittsburgh Bd. of Educ.*, 910 F.2d 1172, 1176 (3d Cir. 1990)). “The rationale for this holding is that the teacher is acting as the educational institution’s proxy during his or her in-class conduct, and the educational institution, not the individual teacher, has the final determination in how to teach the students.” *Id.* (citing *Brown v. Armenti*, 247 F.3d 69, 74–75 (3d Cir. 2001)); *see also Lee v. York Cnty. Sch. Div.*, 484 F.3d 687, 695 (4th Cir. 2007) (“Courts have generally recognized that the public schools possess the right to regulate speech that occurs within a compulsory classroom setting, and that a school board’s ability in this regard exceeds the permissible regulation of speech in other governmental workplaces or forums.”) (collecting cases).

Board Policy 321 stands for the unremarkable proposition that teachers, while on duty, do not have the unconstrained ability to advocate on any issue they desire. Teachers are hired to teach the curriculum, as set forth by Pennsylvania law and School District policy, not to engage in partisan, political, or social policy advocacy. Teachers can advocate on such matters, but on their own time and at their own expense, and not while they are on duty and being paid to do a job. One of the ACLU lawyers in this matter, Richard Ting, admitted as much during a January 5, 2023, presentation he made regarding the ACLU’s complaint against the School District. According to Mr. Ting:

On the teacher side, there are potential First Amendment free speech issues, but the caveat to that is the law on public employee speech is a little bit complicated and murky. So, teachers' First Amendment speech rights while in school are a little bit limited, so it's difficult to say exactly, you know, how this policy by itself might affect that.

Whatever disagreements one might have with the District's decision on classroom advocacy, it is the District's legal right to make this decision. Moreover, the events of the last year suggest that the Board has struck a reasonable balance. When adults channel their disputes into the classroom, it distracts from the school's core educational mission, causes divisiveness, and renders children pawns in battles being waged by adults. The events that led up to the May 2022 Lenape walk-outs are a clear example of this. Activists such as Ms. Pray and Mr. Albert—in conjunction with teachers like Mr. Burgess and Ms. Gluck—set off a chain of events that led to children foregoing their education to engage in a multiday protest, based on the false premise that Mr. Burgess had been suspended for protecting a transgender child.

A teacher's first responsibility is to his students and their education. *E.g.*, 22 Pa. Code § 235.5a(a) (“The primary professional obligation of educators is to the students they serve.”). A teacher is not employed to vindicate his own political views or to prioritize the goals of outside activist groups. Concededly, this case represents an extreme example of the problem—unlike Mr. Burgess, the overwhelming majority of teachers don't collect serious allegations of bullying from a student and sit on them for weeks while trying to construct the perfect legal case

against their employer, and then collude with an ACLU client to provoke a student walk-out. Nonetheless, the result was precisely what Board Policy 321 guards against: “Such advocacy does not contribute to a positive learning climate and may be disruptive, divisive, and distracting.” Board Policy 321.

The School Board was not unreasonable in drawing a division between curricular instruction and advocacy on partisan, political, and social policy issues, and prohibiting the latter. Indeed, during our investigation, staff members told us that they had received complaints from students about teachers pushing their political views in the classroom, and the students feeling pressured not to state disagreement. There are countless political and social policy issues currently dividing our country—abortion, transgender participation in women’s athletics, illegal immigration, and crime and policing, to name a few. Some people might express their views on such subjects with an “Abortion Stops a Beating Heart” sign, a rainbow flag, a lawn placard declaring that “No Human Is Illegal,” or a Blue Lives Matter flag. The School Board has reasonably concluded that such paraphernalia does not aid classroom curricular instruction, but instead risks injecting disruption, division, and distraction.⁵⁸

⁵⁸ Among the correspondence the School District received regarding Board Policy 321 was a letter from several faculty members of the University of Pennsylvania’s Graduate School of Education. 11/4/2022 Letter from Patrick Sexton et al. to the Central Bucks School District [Ex. 88]. The letter ignores the relevant case law on this subject and argues, without evidence, that Policy 321 “exacerbates health risks for vulnerable students while simultaneously reducing their access to an equitable education.” Board Policy 321 does not reduce anyone’s access to a public education. It simply ensures that teachers do not use classroom time for political advocacy.

There are several misconceptions about Board Policy 321. One misconception about the Policy is that it means that there are no Pride flags in District schools. As noted earlier, many schools have active LGBTQ-focused clubs, and the students who participate in those clubs can and do employ such symbols, such as by displaying a rainbow flag on a bulletin board. Again, Board Policy 321 addresses employee advocacy, not student speech.

Some of the opposition to Board Policy 321 is borne out of a misunderstanding of its provisions. For instance, the Policy does not require teachers to engage in false equivalencies about historical events such as the Holocaust or slavery. Indeed, the School District's curriculum, which aligns with Pennsylvania standards, addresses these historical events in an appropriate manner, and educators are expected to teach these subjects accordingly. Just as the presence of a Pride flag does not guarantee that a teacher will protect all students, the absence of a Pride flag—or any other symbol—does not require teachers to ignore the mistreatment of other human beings, past or present. Indeed, the School District and the Commonwealth require instruction on such matters.

Board Policy 321 applies equally to symbols associated with views across the political spectrum. The idea that the Policy singles out Pride flags is incorrect. As School Board President Dana Hunter explained during the debate on Board Policy 321, the Policy prohibits the display of “Blue Lives Matter flags, anti-abortion flags, or any other flags that advocate on social policy issues,” not just rainbow flags. In the absence of Board Policy 321, the District might be hard-pressed to keep out all

sorts of symbols that a teacher might wish to display as connected to identity or political opinions, some of which critics of the Policy would likely not want to see in a classroom. In an effort not to parse every possible symbol that a teacher might want to display, the District has adopted a policy that requires all classroom displays to be connected to instruction and free of political advocacy. Again, people are free to think there are better policy choices and to advocate for those alternatives. But there's no evidence that this policy choice is discriminatory in intent or application.

Some object to Board Policy 321 as vague and unworkable. The administrators and teachers with whom we spoke disagreed. The overwhelming consensus was that districtwide policies brought clarity and helped educators understand what they should and should not be doing. Further, the School District is in the process of developing administrative regulations to implement Board Policy 321. But the basic idea behind the Policy is grounded in common sense: classroom displays should be rooted in the curricular instruction that occurs in the classroom.

The School Board and the School District administration, relying on well-established legal precedent that even the ACLU concedes is controlling, decided to focus on neutrality in the classroom. Like all tough policy choices, a line had to be drawn, and it was done by a majority of the School Board after a long and thoughtful process. Although three members of the Board may have drawn the line elsewhere, or not drawn it all, that is not a basis to set aside the majority's decision. School districts must be governed, and, in this Commonwealth (as it is across the

country), it is done through locally elected school boards drawn from the community served by the schools.

B. The District's Policy for Name and Pronoun Change Requests Is Supported by Law and Legitimate Pedagogical Interests.

Similar to Ms. Smith's July 11 e-mail, OCR's September 23 letter also complains about the School District's requirement that student name and pronoun change requests be approved by the student's parent or guardian. Relatedly, OCR complains about the District's supposed practice of referring all students seeking such a name or pronoun change to a guidance counselor.

By way of background, student names are reflected in IC, the School District's electronic student records database. From time to time, a student or his parent may seek to change the name listed in IC. This sometimes occurs for reasons wholly unconnected to gender transitions. For instance, school staff told us that students whose families are from foreign countries have sometimes sought to "Americanize" their names. Whatever the reason for the change, the School District requires that it be made in IC at the request of a parent or guardian.⁵⁹ If a parent or guardian authorizes the change, that is the end of the matter, and the student will be referred to by the new name. Thus, using the transgender example, a biological girl named "Jane" who wishes to identify as a boy and go by the name "John" and use masculine gender pronouns can do so by having a parent or guardian request the change in IC, which is then processed by District

⁵⁹ When a student uses a nickname that is derived from a given name (e.g., "Mike" for "Michael"), a change in IC is not necessary.

administrators. This has happened numerous times, both before and after the practice was formalized in 2022, with no significant issues. *See, e.g., 5/3/2022 E-Mail Message from Geanine Saullo to Lenape Middle School Staff [Ex. 66]* (discussing policy regarding name changes).

Contrary to OCR's understanding, the School District does not have a practice of "refer[ring] any student that requests a change in name or pronoun(s) to the guidance office." [Ex. 66.] If the parent and student agree, the change can just be made. We do note, however, that, in the spring of 2022 before he was suspended, Mr. Burgess referred multiple transgender students to guidance even though their names had been changed long before. [See Ex. 42.] It appears that Mr. Burgess was trying to provoke a controversy regarding these students, but Mrs. Saullo quickly corrected Mr. Burgess, and the students continued to be referred to by the names they had long used. This may be one source of OCR's misinformation.

When a student makes such a request to a District employee for a name change without securing parental consent, the change is not made. In such circumstances, the School District administration has directed staff to refer the student to a guidance counselor because guidance counselors have the experience, training, and education to assist students in such circumstances. Guidance counselors are employed by the School District to help students with academic and personal development, including navigating sensitive issues between students and parents.

The School District has made the decision not to approve requests to change a student's name or pronouns as they appear in IC without the consent of the student's parent or guardian. This limitation is supported by important constitutional rights and statutory protections possessed by parents and guardians. *See, e.g., Tatel v. Mt. Lebanon Sch. Dist.*, No. 22-837, 2022 WL 15523185, at *13 (W.D. Pa. Oct. 27, 2022) (“The Supreme Court clearly recognized that the right of parents to control the upbringing and education of their children is fundamental. This right is deeply rooted in the nation’s history and implicit in the concept of ordered liberty.”). The District believes that it is best for students to have their parents or guardians involved in such decision making.⁶⁰ And the use of two different names (one for school and one for home) was thought to be unworkable and prone to causing further conflict.

In talking with teachers, guidance counselors, and administrators, we found the policy works well in practice. IC is an electronic records database, and name changes effected in IC can be quickly conveyed to teachers and staff. The overwhelming majority of the time, the student and his parent agreed to the change, and it was made in IC with minimal effort. We learned of a few instances in which there was a disagreement, but school staff told us there were no significant

⁶⁰ As it happens, this subject came up during Mr. Burgess’s interview. Mr. Burgess was asked, “And you’d agree with me that the parent should decide that, right?” He responded, “Yeah. I think that, that sounds like a good idea.” Burgess Interview at 168 [Ex. 11].

adverse consequences for the students involved related to keeping their given names.

The current policy was borne out of an incident involving a child who began going by an alternative name without having it changed in IC. The student's "new" name was listed in a program for a performance at Lenape, and the student's mother saw the new name and lodged an objection with Mrs. Saullo. After discussing the matter with the student's mother (who strongly objected to the name change), the student was referred to by her given name (as opposed to her new name), and Mrs. Saullo sent an e-mail to school staff regarding the policy, which has since been adopted by other District schools. As often happens in schools, a policy or practice will develop organically as circumstances arise.

This incident also illustrates the potential consequences of not involving parents in this important decision. It is not an issue for which surprise and secrecy are the best approaches. Parents will inevitably learn of the different name used at school, and the District has reasonably concluded that it is best for parents to be involved in a proactive way that respects their role as parents and the law regarding parents' rights. *See Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000) ("It is not educators, but parents who have primary rights in the upbringing of children. School officials have only a secondary responsibility and must respect these rights."); *see also C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 185 (3d Cir. 2005)

("[P]arents, not schools, have the primary responsibility to inculcate moral standards, religious beliefs, and elements of good citizenship.").⁶¹

The process that exists today is not a drastic change so much as the development of a protocol for something that was handled informally before. Parents were often involved in these discussions before the implementation of the policy, with occasional instances of students going by different names and pronouns after individual conversations with teachers. The practice of requiring parental approval standardizes a prudent approach for the reasons discussed above. It also aligns with the practice of many schools across the country.

On this point, the School District has decided that it will not "socially transition"⁶² children behind their parents' backs, or even against their parents'

⁶¹ One of the comments the School District received on this subject was from the Philadelphia-based Education Law Center. The Education Law Center argues that "[w]hile FERPA [Family Educational Rights and Privacy Act] gives parents the right to view the school records of their minor children, it does not require schools to proactively contact parents about any content in or changes to student records." 10/11/2022 Letter from Kristina Moon et al. to the Central Bucks School District at 5 (emphasis in original) [Ex. 39]. As an initial matter, the Education Law Center misstates the issue. It is not that the District "contact[s] parents about any content in or changes to student records"; rather, the name changes will not be made in the first place without parental consent. Regardless of whether FERPA requires proactive engagement with parents, the School District has decided to work collaboratively with parents. If anything, the policy embodied by FERPA (*i.e.*, providing parents with access to information about their children) counsels in favor of the School District's approach. Not even the Education Law Center can say that FERPA prohibits the School District's policy.

⁶² "Social gender transition' refers to steps that transgender individuals take to present themselves as being the gender they most strongly identify with." *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 522 (3d Cir. 2018).

wishes. The School District’s policy is not discriminatory in intent or application, it comports with well-established law, and is based sound educational principles.

During our investigation, we did not learn anything that would lead us to believe that the District’s practice has caused anything close to a significant number of students to be unable to pursue name or pronoun change requests. Though objections to the District’s name and pronoun change protocol tend to assume the worst about parents, the vast majority of stories we heard were of parents being supportive of their children and grateful to be involved in the decision—even if the parents expressed initial disapproval. To the extent this policy presents an obstacle to a student’s name change, the District has determined that the potential slowing of the process is preferable to hiding these changes from parents.

C. The School Board Acted Reasonably in Adopting Board Policies Regarding the Age-Appropriateness of Books and Other Materials.

As a practical matter, the Central Bucks School has to make decisions about what books and materials to include on or exclude from its shelves. Here, a line was drawn in response to parental concerns about the age-appropriateness of content in certain books. Specifically, parents objected to content of a graphic sexual nature. In response, the Board adopted, in the summer of 2022, Board Policies 109.1 (which applies to textbooks and resource materials) and 109.2 (which applies to library materials).⁶³ These policies recognize the inherent limitation of

⁶³ See Board Policy 109.1 [Ex. 98]; Board Policy 109.2 [Ex. 99]. Also adopted in summer 2022 was *Board Policy 109: Resource Materials* [Ex. 33], which provides, “The Board shall, by an affirmative vote of a majority of the full Board, provide resource materials that implement, support, and enrich the educational program of district schools.” Board Policy 109 is a general statement of policy. The age-

the District’s resources—both time and money—and prioritize curricular material and library books that do not contain sexualized content beyond what is appropriate for instruction based on the age of the students who have access to the material.

The policies establish a tiered approach, whereby the standards become more permissive as one moves from elementary school to middle school to high school, and establish exceptions where legitimate educational needs would outweigh other concerns. For instance, Board Policy 109.2 restricts, at the elementary-school level, library books containing “visual or visually implied depictions of sexual acts or simulations of such acts,” “explicit or implied written descriptions of sexual acts,” or “visual depictions of nudity or implied nudity.” For middle school, the policy drops the restrictions on written depictions of sex acts and visual depictions of nudity that are merely implied and exceptions are created for “visual depictions of nudity” related to “anatomy for science” or “classical works of art.” For high school, the only restrictions that remain are for “visual or visually implied depictions of sexual acts or simulations of such acts” or “explicit written descriptions of sexual acts.”

Although state and federal criminal laws prohibit the possession, transportation, distribution, or production of certain pornographic materials, the School District is not constrained in its ability to make choices about limiting books and other materials to only what the criminal laws prohibit. There are many policies and rules adopted by school districts that proscribe conduct that would not

appropriateness standards related to resource materials are found in Board Policy 109.1.

necessarily violate criminal statutes. Stated differently, just because something is lawful does not mean that it must be included in a classroom or school library.

Parents and guardians could reasonably expect, for example, that school officials would not provide their children with books containing visual depictions of sex acts.

Conversely, parents and guardians who see no issue with such books are free to obtain and to furnish them to their own children, provided doing so does not violate the criminal laws. In this regard, the policies are not a “book ban”; rather, they establish guidelines about what the School District will make available to students, including some very young students.

Board Policy 109.2 created a process for parents and community members to raise concerns about particular materials—something that was happening previously, anyway. Now it must proceed under an ordered process for review and determination. Parental complaints about sexually explicit materials predated the November 2021 election. When the new Board was inaugurated, it did not take action against specific books; rather, it established neutral, uniform standards and a procedure to address concerns. Thus, there is no basis to OCR’s allegation that the School District, pursuant to the policies, required “teachers to remove books containing LGBTQ+-based content or themes from classrooms.” To date, no book has been removed pursuant to the policies or any administrative regulations.⁶⁴

⁶⁴ See Board Policy 109.2 [Ex. 99]; see also *Central Bucks Library Department Administrative Regulation (109.2)* (establishing a procedure for review of books) [Ex. 32].

At the time the School Board adopted the policies in summer 2022, there were no policies addressing these subjects. Instead of proceeding on an *ad hoc*, book-by-book basis, the Board created a standard that would apply to all books and a procedure for resolving any issues that might arise. As with all of the policies referenced in the OCR letter, reasonable minds could differ as to where to draw the line, but there is nothing unreasonable about where the School Board drew the line here, and certainly nothing rising to the level of a federal civil rights violation.

In a fractured opinion, the U.S. Supreme Court has addressed a school district's discretion to remove books from public school libraries. *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853 (1982). The Justices split four to four on the import of the First Amendment for optional reading materials in public schools, with the ninth Justice declining to take a position on the constitutional question. *Id.*

The *Pico* opinion has two basic views that courts continue to cite on a case-by-case basis. Justice Brennan, writing for himself and two others, would have held that the school district violated the student's First Amendment rights in removing certain books, stating that "the special characteristics of the school library make that environment especially appropriate for the recognition of the First Amendment rights of students." *Id.* at 868. The other view, expressed by Justice O'Connor, is one of deference to elected school board members: "I do not personally agree with the Board's action with respect to some of the books in question here, but it is not

the function of the courts to make the decisions that have been properly relegated to the elected members of school boards.” *Id.* at 921 (O’Connor, J., dissenting).

Because neither of these views garnered a majority, there is not a controlling standard for schools to apply, but even under Justice Brennan’s preferred standard, the District has not run afoul of any constitutional protections for optional reading materials in public schools. *See id.* at 863 (“The Court has long recognized that local school boards have broad discretion in the management of school affairs.”).⁶⁵ Nothing in the District’s library book policy targets books based on partisan or political concerns. *See id.* at 869–70 (“[W]e do not deny that local school boards have a substantial legitimate role to play in the determination of school library content But that discretion may not be exercised in a narrowly partisan or political manner.”).⁶⁶

⁶⁵ Although certain interviewees conflated the two policies, there is a key distinction between them. Board Policy 109.1 relates to textbooks and resource materials, while Board Policy 109.2 relates to library books. The Court’s *Pico* decision specifically deals with library books. As to materials covered by Policy 109.1, the School District has far more latitude over textbooks and curricular materials.

⁶⁶ The Education Law Center wrote the School District about Board Policy 109.2. Some of its concerns are premature. Should the School District remove a book from a school library and do so in a way that violates the First Amendment (which we have no reason to believe would occur given the provisions of Board Policy 109.2 and the administrative regulations), then the issue can be addressed at that time. The Education Law Center also complains about the burden on District staff members to comply with Board Policy 109.2. But the School District administration is in a better position than the Education Law Center to weigh the costs and benefits of dedicating staff time to this endeavor. The Education Law Center also complains that Board Policy 109.2 was being considered “within the context of several months of complaints from parents and students about policies and practices that create hostile learning environments for LGBTQ students and a failure of the entire Board to condemn such policies and practices and offensive transphobic and antisemitic comments made at board meetings.” As our investigation has found, the District

Board Policies 109.1 and 109.2 apply the same standard to books with “LGBTQ+-based content or themes” as all other books. Rather than engaging in an idiosyncratic approach where the standard might change from book to book, the Board adopted a common standard to be applied across the board. The Board reasonably concluded that certain materials would be inappropriate for children of certain grade levels. That is not to say that policies like Board Policy 109.1 and 109.2 couldn’t be applied in a discriminatory manner, but the policies are facially neutral, and there is no evidence that they have been applied in a discriminatory fashion (and as previously noted, to date, no book has been removed pursuant to the policies).

D. The School District’s Approach to Sexuality Classes Is Reasonable and Reflects Ongoing Evaluation to Meet Student Needs.

The School District’s Human Growth and Development class was an approximately one-hour course offered once a year in the fourth, fifth, and sixth grades (all of which are housed in the School District’s elementary schools). For the 2021–2022 school year, the fourth grade class had separate topics for boys and girls, and the classes were divided by biological sex. For the fifth and sixth grades, the class content was the same for boys and girls, but the class sessions were conducted separately by sex.

has not created a hostile learning environment for LGBTQ students. In any event, simply because some members of the public have argued the contrary does not mean that the Board cannot adopt a neutral policy on the age-appropriateness of library books. *See* 6/14/2022 Letter from Kristina Moon & Maura McInerney to the School District at 1–2 [Ex. 23].

Separating sexuality classes by sex has long been the norm in schools around the country. Boys and girls have obvious sex differences, and schools have found it beneficial to address sensitive human sexuality topics separately by sex. The federal regulations promulgated pursuant to Title IX recognize these common-sense principles and expressly provide that “[c]lasses or portions of classes in elementary and secondary schools that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.” 34 C.F.R. § 106.34(a)(3); *see also Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 809 (11th Cir. 2022) (“[A] policy can lawfully classify on the basis of biological sex without unlawfully discriminating on the basis of transgender status.” (citing *Nguyen v. INS*, 533 U.S. 53, 60 (2001))).

During the 2021–2022 school year, a parent of a transgender child wanted his child to attend the section of the Human Growth and Development class that matched the child’s gender identity and not the child’s biological sex. In an effort to accommodate this parent, the School District decided to change the class from an in-person format to an online format for all schools that had not yet conducted the course that year, providing each student in those schools with a “self-enroll” option that parents and guardians could use to make informed decisions on which lessons they wanted their child to complete, regardless of their child’s biological sex.

Arguably, the School District did not need to make that accommodation in order to comply with the law and, instead, could divide elementary school students by biological sex (as opposed to gender identity). *See Adams*, 57 F.4th at 809.

Ultimately, though, we need not resolve this issue because recently the School District decided to restructure its Human Growth and Development class. The fourth grade class (which was the only one that previously offered different subject matter by sex) is being eliminated, and ultimately the course will be offered only once in elementary school, in the sixth grade, on a coeducational basis.

CONCLUSION AND RECOMMENDATIONS

Duane Morris conducted a thorough, five-month investigation to get to the facts in this matter. Based on our investigation, we offer the following recommendations for the School District's consideration:

1. The School District should suspend Mr. Burgess from his duties, without pay.
2. The School District should appropriately coordinate with Student 1's new school to ensure that his needs are properly addressed.
3. The School District should continue to follow its established building security protocols.
4. The School District should continue to follow and enforce its Title IX compliance program, as well as its other formal and informal policies designed to address and prevent bullying, harassment, and discrimination.
5. To the extent that the Board of School Directors continues to find the policies beneficial, the School District may continue to maintain and enforce Board Policies 109, 109.1, 109.2, and 321, and the District's policy related to student name and gender pronoun changes.

The Central Bucks School District has a proud history going back over seven decades. It is one of the Commonwealth's highest performing school districts academically; it offers its students a wide array of extracurricular and athletic opportunities; and its facilities are modern and set against the backdrop of one of Pennsylvania's most beautiful regions. Most importantly, its dedicated teachers and staff create an inclusive and welcoming environment for all students by showing genuine concern for the students entrusted to their care.

While the District should always seek improvement, the picture that has been painted of the District by the ACLU and its allies is unsupported by the evidence. And it is that evidence that should continue to guide the District as it strives to serve students of all backgrounds and to provide them with nurturing places to learn, grow, and thrive.