

November 29, 2023

Via email and first-class mail

School Board of Charlotte County
1445 Education Way
Port Charlotte, FL 33948

Re: The district's unlawful and discriminatory policy of banning books with LGBTQ+ content from district libraries, classrooms, and curriculums.

Dear Board Members,

We write on behalf of All Rainbow and Allied Youth Inc. (ARAY) and PFLAG of Port Charlotte to demand that the district immediately cease its discriminatory and unlawful policy and practice of banning books with LGBTQ+ characters and themes from district media centers, curricula, and classrooms. We understand that the district has received legal advice that this practice is required by state law, but that advice is wrong according to the Florida Attorney General and other school districts in the state. Regardless, this discriminatory practice of erasing an entire class of people from schools violates the First and Fourteenth Amendments. It must end now.

We understand from a document summarizing a meeting between Superintendent Vianello, district counsel, and media specialists that the district's policy requires removal from classroom libraries of any "[b]ooks with LBGTQ+ characters" or "LGBTQ+ themes that are overarching in the narrative or that promote the gay or trans lifestyle."¹ Media specialists were told that "we [are] removing books from any school or media center, Prek-12 if a character has, for example, two mothers or because there is a gay best friend or a main character is gay[.]" This includes books selected by students "for silent sustained reading in class, or book reports, or anything involving instruction" and even "after school book clubs run by teachers."² In short, "LBGTQ characters or themes ... cannot exist."³ In a recent meeting with ARAY and PFLAG of Port Charlotte, district leadership did not deny that district staff were given this guidance or that it remained in effect. This blatantly discriminatory practice is no more acceptable or legal than a policy of removing books featuring Black or Christian characters from schools.

¹ School Board of Charlotte County, *Media Conversation Recap w/ School Board Attorney M. McKinley: April 21, 2023 (follow up conversation with Mr. McKinley and Mr. Vianello – 7/24/23)*, obtained through public records. A district spokesperson has attempted to distance the district from this document on the grounds that "the statements ... are not direct quotes and our [sic] assumptions or summarizations that the staff member took from that conversation, and then drafted this document." Douglas Soule, *Florida County Removes LGBTQ Books from Schools: "These Characters and Themes Cannot Exist,"* USA Today (Sept. 28, 2023).

² *Id.*

³ *Id.*

District leaders have claimed, wrongly, that this policy and practice is required by Florida’s so-called “Don’t Say Gay” law, which prohibits “[c]lassroom instruction ... on sexual orientation or gender identity” in kindergarten through eighth grade and allows only “age-appropriate or developmentally appropriate” instruction for high school students. Fla. Stat. § 1001.42(8)(c)3. By interpreting this language to prohibit only gay, transgender, and other LGBTQ+ characters and themes, the district is, absurdly, asserting that straight and cisgender individuals do not have sexual orientations or gender identities—otherwise books that contain straight and cisgender characters would also violate the statute. In fact, as Attorney General Ashley Moody has explained, the law “does not prohibit literary references to a gay or transgender person or to a same-sex couple.”⁴

The Attorney General has also confirmed that simply mentioning the existence of LGBTQ+ characters or themes does not constitute “instruction” under the statute: “[A] tangential reference to a person’s sexual orientation is not ‘classroom instruction’ on it, just as a math problem asking students to add bushels of apples is not ‘instruction on’ apple farming.”⁵ The statute, she explained, “restricts instruction on particular subjects (sexual orientation and gender identity), not mere discussion, let alone mere mention, of them.”⁶

The state has repeatedly affirmed that “the statute regulates only ‘classroom instruction,’ not the availability of library books.”⁷ Nonetheless, the district has applied Section 1001.42(8)(c)3 to school libraries. District leadership has justified this by arguing that school media centers are sometimes used for classroom instruction and are therefore “classroom settings.” But that is irrelevant: A book on a classroom or library shelf is not, without more, “instruction” by any reasonable definition of that word. Nor is a book selected by a student for independent reading or a homework project—both also banned by district policy.

Finally, even if district policy were required by state law, it would still be unconstitutional. Imagine a law that prohibited mention of Black people from school curricula, that banned all books featuring Jews, or that prohibited students from reading any books about people with disabilities for class projects. It is impossible to imagine that any of these restrictions would be allowed. Similarly, the district policy violates the First Amendment rights of students to receive information⁸ and the Equal Protection Clause of the Fourteenth Amendment by

⁴ See *Cousins et al. v. School Board of Orange County*, State Defendants’ Second Motion to Dismiss and Incorporated Memorandum of Law, ECF 112 at 3, No. 6:22-cv-1312 (M.D. Fla. 2022).

⁵ See *Cousins et al. v. School Board of Orange County*, Attorney General’s Opposition to the Motion for Preliminary Injunction, ECF 52 at 4, No. 6:22-cv-1312 (M.D. Fla. 2022) (citation removed).

⁶ See *id.*

⁷ See *Cousins et al. v. School Board of Orange County*, State Defendants’ Second Motion to Dismiss and Incorporated Memorandum of Law, ECF 112 at 8, No. 6:22-cv-1312 (M.D. Fla. 2022).

⁸ See *Board of Education v. Pico*, 457 U.S. 853 (1982); *ACLU v. Miami—Dade Cnty. Sch. Bd.*, 557 F.3d 1177 (11th Cir. 2009); *Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, 2022 WL 16985720, at *12 (N.D. Fla. Nov. 17, 2022).

targeting LGBTQ+ people for erasure from school curricula.⁹ Further, it will create a hostile environment for LGBTQ+ students in violation of Title IX of the Education Amendments of 1972.¹⁰ If the district does not revoke its unlawful and unconstitutional policy and practice it will be opening itself up to litigation. Prevailing plaintiffs in such litigation will be entitled not only to injunctive relief but also to attorneys' fees.¹¹ We trust that the district will meet its legal obligations and cease its illegal suppression of LGBTQ+ content in district schools. ARAY and PFLAG of Port Charlotte are available through the undersigned attorneys to discuss the matter further at your convenience.

Sincerely,

/s/ Sam Boyd

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⁹ “[I]f the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare ... desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” *Romer v. Evans*, 517 U.S. 620, 634 (1996) (quoting *Department of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973)); *see also Arce v. Douglas*, 793 F.3d 968, 978-81 (9th Cir. 2015) (law banning Mexican American Studies based on themes, not identity of their authors, subject to Equal Protection Clause challenge because law had disparate impact on students of Mexican descent and was motivated in part by discriminatory animus).

¹⁰ OCR Complaint No. 04-22-1281, 6-7 (May 19, 2023) (finding that “communications at board meetings conveyed the impression that books were being screened to exclude diverse authors and characters, including people who are LGBTQI+... leading to increased fears and possibly harassment.”).

¹¹ 42 U.S. Code § 1988.



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