



November 21, 2022

Office for Civil Rights
U.S. Department of Education
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Re: Sex Discrimination Complaint Against Keller ISD

Dear Department of Education, Office of Civil Rights:

Keller Independent School District, located in Tarrant County, Texas, has engaged in unlawful sex discrimination against transgender, non-binary, gender diverse, and intersex students in violation of Title IX of the Education Amendments of 1972.

On November 14, 2022, the Keller ISD school board voted to ban library materials that discuss or depict what the policy calls “gender fluidity” for all grade levels.¹ All four school board members on the seven-member board who voted in favor of the policy evinced animus towards LGBTQ+ students, publicly making anti-LGBTQ+ comments at the board meeting at which the policy was adopted. This policy seeks to erase transgender and non-binary identities in particular and sends the message that transgender and non-binary students do not belong in the Keller ISD community. The board members’ comments and Keller ISD’s track record of removing LGBTQ+ books make this intent clear. The effect of the policy, absent federal civil rights intervention, will be to stigmatize LGBTQ+ and particularly transgender, non-binary, gender diverse, and intersex students in Keller ISD, to uniquely deprive them of the opportunity

¹ Keller ISD Board Meeting, November 14, 2022, <https://www.youtube.com/watch?v=jOhv1ovQZ10&t=11020s> (video recording of school board meeting).

to read books that reflect their identities, and to create an environment in which unlawful discrimination flourishes.

Title IX bars discrimination on the basis of sexual orientation or gender identity, as this department has recognized. Through its actions, Keller ISD is engaging in sex discrimination in violation of Title IX. We are civil rights organizations dedicated to upholding the rights of all people in Texas, including LGBTQ+ students. We urge the Office for Civil Rights to open an investigation into Keller ISD's sex discrimination and to take all necessary remedial measures to ensure that the district complies with Title IX.

I. Keller ISD's Book Ban Policy Discriminates Against Transgender, Non-Binary, Gender Diverse, and Intersex Students

On November 14, Keller ISD amended the District's Content Guideline Exhibit to its Library Materials Policy, EFB(Exhibit), to prohibit and remove library books and other library materials that "adopt, support, or promote" "the discussion or depiction of gender fluidity."² It defines "gender fluidity" as: "any theory or ideology that: (1) espouses the view that gender is merely a social construct; (2) espouses the view that it is possible for a person to be any gender or none (i.e., non-binary) based solely on that person's feelings or preferences; or (3) supports hormone therapy or other medical treatments or procedures to temporarily or permanently alter a person's body or genetic make-up so that it 'matches' a self-believed gender that is different from the person's biological sex (as determined by the person's birth certificate made at or near the time of the person's birth)."³

This policy will ban any library book that includes or mentions a transgender or non-binary person, including book characters and historical figures, as well as any library book that includes the fact that people are transgender and non-binary. The policy is discriminatory on its face. It seeks to suppress, in Keller ISD libraries, all access to information that it is possible for a person to be transgender or non-binary. In other words, the policy attempts to erase the existence of transgender and non-binary individuals. In its broad and vague wording, it threatens to similarly erase the existence of intersex individuals as well.

² Policy EFB(Exhibit) Content Guidelines (last accessed November 21, 2022), <https://meetings.boardbook.org/Documents/WebViewer/2320?file=c02ea90f-ed19-4e85-8d20-558e1bb7d052> (new Content Guideline Exhibit); Keller ISD Board Policy EFB—Instructional Resources: Library Materials (Sep. 6, 2022), <https://pol.tasb.org/PolicyOnline/PolicyDetails?key=1103&code=EFB> (library materials policy prohibiting materials that "adopt, support, or promote subject matter that has been prohibited by law or by the District's Content Guideline Exhibit").

³ Policy EFB(Exhibit) Content Guidelines (last accessed November 21, 2022), <https://meetings.boardbook.org/Documents/WebViewer/2320?file=c02ea90f-ed19-4e85-8d20-558e1bb7d052>.

The adoption of such a sweeping ban on books recognizing or acknowledging the existence of transgender and non-binary people is not about parental rights. Keller ISD’s library materials policy already included an opt-out process for parents, in which parents could opt to “restrict[] specific titles or books, genres, subject matter, authors, or other restrictions as requested by parents.”⁴ Instead, this policy change seeks to bar, for *every* student in the district, access to information about the existence and experiences of transgender and non-binary people, and access to any work of literature that features a transgender or non-binary individual—even if a student’s parents want them to have access to such books.

Further, this policy change comes on the heels of Keller ISD’s disparate removal of LGBTQ+ books from Keller ISD shelves, in a set of removals contrary to district policy. On August 16, 2022, one day before the start of school, Keller ISD’s executive director of curriculum and instruction directed principals to remove all books challenged in the preceding year from library and classroom shelves.⁵ At least 18 of those 41 books, or 44%, related to themes of LGBTQ+ inclusion.⁶ The removed books included such titles as the acclaimed *Last Night at the Telegraph Club*, winner of the National Book Award for Young People’s Literature, and works pertaining specifically to transgender identity and inclusion, such as *I Am Jazz* and *The Breakaways*. Keller ISD’s removal of the books was not in accordance with district policy: the books were previously challenged, but the district did not cite a new challenge as the basis for review. These prior actions this school year by the district both indicate anti-LGBTQ+ animus as a motivation for the new book ban policy and have further contributed to a hostile environment that discriminates against LGBTQ+, particularly transgender and non-binary, students in the district. The new book ban policy adds to and goes beyond the previous ad hoc removals, systematizing the erasure of transgender and non-binary identities and experiences.

II. Keller ISD Trustees Made Anti-LGBTQ+ Statements and Evincing Animus toward Transgender and Non-Binary People in Adopting the Book Ban Policy

In the lead up to Keller ISD’s adoption of its policy barring the “discussion or depiction” of “gender fluidity,” the four members of the seven-member Keller ISD board who ultimately voted to adopt the policy explained that their votes in favor were based on anti-LGBTQ+ animus. They made blatantly anti-LGBTQ+ comments and perpetuated misinformation about transgender and non-binary identities. Charles Randklev, President of the Keller ISD Board of Trustees, posted a public Facebook message on November 13, 2022, evincing discriminatory intent in adopting the policy. In the message, he described the ban as a measure to “protect children from

⁴ Keller ISD Board Policy EFB—Instructional Resources: Library Materials at 10, *supra* note 2.

⁵ Elizabeth Campbell, *Keller Schools Pulled Books from Libraries, Including “Anne Frank” Graphic Novel and Bibles*, Fort Worth Star-Telegram, Aug. 18, 2022, <https://www.star-telegram.com/news/local/education/article264574871.html> (including list of all removed books).

⁶ Letter from ACLU of Texas et al. to Keller ISD Board Members and Superintendent (Aug. 18, 2022), <https://guides.libraries.uc.edu/c.php?g=222758&p=1473415>.

sexually-explicit, age-inappropriate instructional materials.”⁷ To assert that the mere presence of a transgender or non-binary character would render a book “sexually-explicit” or “age-inappropriate” is inflammatory, inaccurate, and discriminatory. President Randklev repeated his assertion that the policy bars “age-inappropriate,” “sexually explicit,” and “pornographic” material to justify his vote at the board meeting at which the policy was adopted.⁸

In his Facebook post, Board President Randklev went on to assert that the policy “affirms Texas law,” which “considers performing gender modification procedures upon minors to be child abuse.” This is simply untrue. Gender-affirming care is legal in Texas, despite assertions by state officials to the contrary.⁹ Moreover, nothing in Texas law requires schools to censor books related to transgender and non-binary identities. President Randklev asserted this untrue justification again at the board meeting just prior to voting in favor of the policy.¹⁰

During the board’s discussion of the “gender fluidity” book ban, the three additional members of the seven-member board who voted in favor of the policy also explained their votes in anti-LGBTQ+ terms—making plain that their votes were due to anti-LGBTQ+ animus:

- Board Secretary Joni Shaw Smith stated: “I do trust librarians. I trust our teachers and I wanted to know that I don’t have to look at this list *but here I am finding multiple books that unfortunately are part of the LGBTQ community.*”¹¹ Board Secretary Smith’s comment makes plain the discriminatory rationale underlying Keller ISD’s book ban: to erase not only the stories of transgender and non-binary people from the shelves but to erase transgender and non-binary people from the Keller ISD community. Secretary Smith suggested that a book called *Ever Ever After: New Queer Fairy Tales* should have

⁷ Dr. Charles Randklev, Keller ISD Board of Trustees, Place 6 (Nov. 13, 2022), www.facebook.com/DrCharlesRandklev/.

⁸ Keller ISD Board Meeting, ~ 3:17:30, *supra* note 1.

⁹ On February 22, 2022, Attorney General Ken Paxton released a non-binding opinion claiming that essential health care for transgender youth is “child abuse” under Texas law. The next day, Governor Greg Abbott directed the Texas Department of Family Protective Services (DFPS) to investigate families of transgender youth who receive gender-affirming health care. DFPS began investigating these families. The ACLU of Texas and partners filed suit to protect transgender young people’s right to receive essential health care. Since then, more than ten court orders at the district court, appellate court, and Texas Supreme Court have established that Abbott and DFPS’s actions are likely unlawful and caused irreparable harm. While the case is still ongoing, the orders so far have made clear that Texas law has not changed and gender-affirming health care is still fully legal in Texas. *See* Andy Rose, *Judge rules Texas must stop child abuse investigations of gender-affirming care against members of LGBTQ advocacy group*, CNN (Sep. 16, 2022), <https://www.cnn.com/2022/09/16/us/texas-gender-affirming-care-ruling/index.html>; Eleanor Klibanoff, *Texas Supreme Court allows child abuse investigations into families of transgender teens to continue*, The Texas Tribune (May 13, 2022), <https://www.texastribune.org/2022/05/13/transgender-teens-child-abuse-texas/>.

¹⁰ Keller ISD Board Meeting, ~ 3:19:30, *supra* note 1.

¹¹ William Joy, *Parent of nonbinary student pushes back on Keller ISD’s new book ban*, WFAA (Nov. 15, 2022), <https://www.wfaa.com/article/news/local/parents-push-back-against-keller-isd-book-ban-nonbinary-transgender-characters/287-04d3f985-61d0-4ae2-880d-2fbc47215c63>.

been “red flagged” from the school library because of its subtitle containing the word “queer”—in other words, because the book pertained to LGBTQ+ themes.¹² Secretary Smith stated that she was voting for the policy—again, barring “discussing or depicting” transgender and non-binary individuals—to “protect our children from things that they do not need to see and that they are not ready to see.”¹³

- Board Vice President Sandi Walker also provided discriminatory logic as her rationale for the policy: “I will always fight to protect a child’s innocence, and discussions regarding gender fluidity and other ideologies do not belong in the schools but in the homes.”¹⁴ This comment led to whooping and applause from the meeting audience.¹⁵
- Board Trustee Micah Young “added on” to Vice President Walker’s comments: “What we need to do is get away from these ideas that bring an ideology into the classroom. We talked about keeping politics out of the classroom and this is it.” Trustee Young asserted that the district needed to stop “trying to get kids to change from one gender to the next” and disparaged the relative marginalization of LGBTQ+ students.¹⁶

III. Keller ISD Board Members’ Remarks and the Book Ban Policy Have Harmful, Discriminatory Effects on Transgender and Non-Binary Students in Keller ISD

As one Keller ISD board member put it, Keller ISD’s ban on books about gender fluidity tells transgender and non-binary students in the district, “We’re sorry, you don’t exist.”¹⁷ The message that the Keller ISD board sent to its students through both the book ban policy and their statements explaining why they passed the policy is very clear: transgender and non-binary students do not belong in Keller ISD and are not part of the Keller ISD community. In censoring books about transgender and non-binary identities, the Keller ISD Board has invalidated the experiences of transgender and non-binary students—they will not find themselves or the experiences of their communities reflected in Keller ISD libraries. As one LGBTQ+ student at Keller High School explained to the Board at an August meeting, library books that reflected his experiences impacted him as a younger student: “I loved being able to finally relate to a character and feel truly seen and authentically for the first time in my life . . . [a] lot of students feel the same way I did.”¹⁸

¹² Keller ISD Board Meeting, ~ 3:14:00, *supra* note 1.

¹³ *Id.* at ~ 3:14:30.

¹⁴ William Joy, *Parent of nonbinary student pushes back on Keller ISD’s new book ban*, WFAA (Nov. 15, 2022), <https://www.wfaa.com/article/news/local/parents-push-back-against-keller-isd-book-ban-nonbinary-transgender-characters/287-04d3f985-61d0-4ae2-880d-2fbe47215c63>; Keller ISD Board Meeting, ~ 3:09:00, *supra* note 1.

¹⁵ Keller ISD Board Meeting, ~ 3:09:30, *supra* note 1.

¹⁶ *Id.* at ~ 3:09:45.

¹⁷ *Id.* at ~ 3:12:00.

¹⁸ Meghan Mangrum, *Keller ISD adopts new book challenge policy as divided community packs meeting*, Dallas Morning News (Aug. 23, 2022), <https://www.dallasnews.com/news/education/2022/08/23/keller-isd-adopts-new-book-challenge-policy-as-divided-community-packs-meeting/>.

The stakes of Keller ISD’s actions are high. The new policy will literally purge acknowledgment of the existence of transgender and non-binary people from Keller ISD shelves. Transgender and non-binary students will be deprived of the opportunity to read books that reflect their lives and experiences—or contain a single character that shares their gender identity. The policy’s effects—further stigmatizing transgender and non-binary students in the district and conveying to their peers, teachers, and the school community at large that transgender and non-binary students do not belong—will have severe repercussions for an already marginalized student population. The Keller ISD board’s unabashedly anti-LGBTQ+ policy will likely lead to worse educational and mental health outcomes for transgender and non-binary students.¹⁹

Federal law bars discrimination on the basis of sexual orientation or gender identity, as Department of Education guidance recognizes.²⁰ President Biden’s March 2021 executive order clarifies that it is administration policy “that all students should be guaranteed an educational environment free from discrimination on the basis of sex . . . including discrimination on the basis of sexual orientation or gender identity.”²¹ The Department of Education recognizes that, under Supreme Court precedent, “the best reading of Title IX’s prohibition on discrimination ‘on the basis of sex’ is that it includes discrimination on the basis of gender identity and sexual orientation.”²²

Keller ISD’s discriminatory acts—barring books that “discuss or depict” “gender fluidity” on an openly anti-LGBTQ+ basis—create a pervasively hostile atmosphere for LGBTQ+ students, especially transgender, non-binary, gender diverse, and intersex students, in Keller ISD. The undersigned organizations committed to LGBTQ+ equality and education equity request that the Office of Civil Rights investigate Keller ISD for its violation of Title IX.

¹⁹ Forty-five percent of LGBTQ+ youth “seriously considered suicide in the past year, including more than half of transgender and nonbinary youth.” See *National Survey on LGBTQ Youth Mental Health 2022*, The Trevor Project, available at <https://www.thetrevorproject.org/survey-2022/>. Tragically, 18% percent of LGBTQ+ youth attempted suicide this the past year. *Id.* But transgender and non-binary youth who reported high gender identity acceptance from adults have significantly lower odds of attempting suicide. Specifically, acceptance from school professionals reduced the odds of suicide attempts by 33%. Josh Weaver, *Acceptance of Transgender and Nonbinary Youth from Adults and Peers Associated with Significantly Lower Rates of Attempting Suicide*, The Trevor Project (Nov. 3, 2021), <https://www.thetrevorproject.org/blog/acceptance-of-transgender-and-nonbinary-youth-from-adults-and-peers-associated-with-significantly-lower-rates-of-attempting-suicide/>.

²⁰ *Confronting Anti-LGBTQ+ Harassment in Schools*, U.S. Dep’t of Justice, Civil Rights Division and U.S. Dep’t of Education, Office for Civil Rights (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>.

²¹ EO 14,021, *Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*, 86 Fed. Reg. 13,803 (Mar. 11, 2021).

²² *Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021).

Sincerely,

American Civil Liberties Union of Texas

Children's Defense Fund—Texas

Equality Texas

IDRA (Intercultural Development Research Association)

Resource Center

Transgender Education Network of Texas (TENT)

Texas Freedom Network (TFN)