



August 10, 2023

Office for Civil Rights  
U.S. Department of Education  
Renaissance Tower  
1201 Elm Street, Suite 1000  
Dallas, Texas 75270

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*Sent Via E-mail*

**Re: Complaint of Sex Discrimination 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, and intersex students in violation of Title IX of the Education Amendments of 1972. On June 28, 2023, the Keller ISD school board voted to enact the attached policies—CS (Local) and FI (Local)—entitled “Facility Standards” and “Identification of Students,” respectively.<sup>1</sup> CS (Local) would ban students from accessing multi-user facilities that align with their gender identities and instead generally require them to use the restrooms that correspond with sex assigned at birth. FI (Local) would discourage the use of affirming pronouns that correspond to a student’s gender identity. The policy allows, and

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<sup>1</sup> See Policy CS (Local), Keller ISD (enacted June 28, 2023) (**Exhibit 1**); Policy FI (Local), Keller ISD (enacted June 28, 2023) (**Exhibit 2**); Keller ISD, *Keller ISD Board Meeting*, YOUTUBE (June 20, 2023), [https://www.youtube.com/watch?v=mYclnB\\_PvFM](https://www.youtube.com/watch?v=mYclnB_PvFM) (video recording of school board meeting at which the policies were introduced); Keller ISD, *Keller ISD Board Meeting*, YOUTUBE (June 28, 2023), [https://www.youtube.com/watch?v=A6KgZjJ\\_PzQ](https://www.youtube.com/watch?v=A6KgZjJ_PzQ) (video recording of school board meeting at which the policies were adopted).

seemingly encourages, any student or staff member to purposefully misgender other students at school.<sup>2</sup>

For the reasons stated below, these policies violate Title IX. Absent federal civil rights intervention, the policies will harm transgender, non-binary, and intersex students, substantially invade their privacy, and create a hostile school environment in which harassment and bullying will flourish.<sup>3</sup>

Title IX bars discrimination on the basis of sexual orientation and 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 LGBTQI+ 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. We also ask the Office for Civil Rights to view this complaint in the context of Keller ISD's recent decision to ban books that discuss or depict "gender fluidity,"<sup>4</sup> and the Department's recent determination that a school district's removal of certain books may create "a hostile environment for students based on sex, in violation of Title IX."<sup>5</sup> Collectively or individually, each of these recent policies will generate a hostile educational environment for the district's transgender, non-binary, and intersex students.

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<sup>2</sup> School Board President Charles Randklev publicly characterized the policy as a requirement that "[s]tudents and adults will be referred to based on their biological sex." Charles Randklev (Charles Randklev, Keller ISD Board of Trustees, Place 6), FACEBOOK (June 20, 2023), <https://www.facebook.com/DrCharlesRandklev/posts/pfbid02437jxo9eqbcRjGY5PFwfcxxS5wkyJLRkhEXnsBqvTGjvpHgi8zcWdCAYhtV5rPl>.

<sup>3</sup> The enactment of these policies has already caused profound distress and concern in the Keller ISD community. *See, e.g.*, Bill Zeeble, *Keller ISD trustees adopt controversial bathroom and pronoun policies*, KERA NEWS (June 29, 2023), <https://www.keranews.org/education/2023-06-29/keller-isd-trustees-adopt-controversial-bathroom-and-pronoun-policies> (quoting a concerned Keller ISD graduate who identifies as queer: "These policies protect bullies and will embolden their hate . . . So many of you here speak of protecting children, yet seem so eager to leave our most vulnerable and at-risk kids behind").

<sup>4</sup> *See Sex Discrimination Complaint Against Keller ISD*, submitted by ACLU of Texas, Children's Defense Fund—Texas, Equality Texas, IDRA (Intercultural Development Research Association), Resource Center, Transgender Education Network of Texas (TENT), and Texas Freedom Network (TFN) (November 21, 2022) (**Exhibit 3**).

<sup>5</sup> *See Letter to Superintendent Bearden Re: OCR Complaint No. 04-22-1281*, United States Department of Education Office for Civil Rights, Region IV (May 19, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04221281-a.pdf>.

## I. CS (Local) and FI (Local) Were Enacted to Discriminate against Transgender, Non-Binary, and Intersex Students

During the school board meetings at which these policies were discussed, Keller ISD school board members indicated that the policies were based on animus towards transgender, non-binary, and intersex students. This was evidenced by multiple school board members asserting that the policies were intended to “protect” cisgender students, teachers, and staff in the absence of any actual incidents of harm or discrimination.<sup>6</sup> But to assert that transgender students’ presence in multi-user restrooms undermines the safety or protection of cisgender students or teachers is inaccurate and discriminatory. Similarly, by disingenuously contending that allowing and encouraging the misgendering of students in any way “protects” students and teachers, the school board emboldens the harassment of some of its most vulnerable students.

Unfortunately, certain Keller ISD board members have a history of publicly denigrating the LGBTQI+ community. For example, while the school board was considering its November 2022 policy to ban books depicting “gender fluidity,” four board members made disparaging comments about the LGBTQI+ community and its alleged “ideology” at a school board meeting.<sup>7</sup> Board Secretary Joni Shaw Smith stated: “I am finding multiple books that unfortunately are part of the LGBTQ community.” She also suggested that a book called *Ever Ever After: New Queer Fairy Tales* should have been “red flagged” from the school library because of its subtitle containing the word “queer”—in other words, because the book pertained to LGBTQI+ themes.<sup>8</sup> And 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.”<sup>9</sup> Further, a recently elected board member previously commented that “Gender ideology and Gender theory have no place in our schools. These are political ideologies that distort the truth.”<sup>10</sup> By vilifying and ostracizing transgender, non-binary, and intersex students, Keller ISD school board members have made it plain that their intention was to discriminate against students because of their sex, including their gender identity and non-conformance with gender stereotypes.

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<sup>6</sup> *Keller ISD Board Meeting* (June 20, 2023), *supra* note 1 at ~ 4:51:50, (comments by Trustee Sandi Walker); *id.* at ~ 4:57:03 (comments by Trustee Chris Coker); *Keller ISD Special Board Meeting* (June 28, 2023), *supra* note 1 at ~ 3:00:36, (comments by School Board President Charles Randklev). *See also* Charles Randklev, *supra* note 2 (asserting that CS (Local) and FI (Local) were “policies focused on protecting students and educators”).

<sup>7</sup> *See Sex Discrimination Complaint Against Keller ISD*, *supra* note 4 (documenting comments by Trustees Charles Randklev, Joni Shaw Smith, Sandi Walker, and Micah Young).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Chris Coker (Chris Coker, Keller ISD Board of Trustees, Place 5), FACEBOOK (April 17, 2023), <https://www.facebook.com/cokerforkisd/posts/pfbid0wvqci79fNEzgYNbD7jAoWXbyqDwfASBnAq9SjMUVUhttvR5tTAzDk4Nqpa22UrgHl>.

These policies seemingly allow Keller ISD, its teachers, and administrators to discriminate in violation of federal law and even ignore Texas law by disavowing students' legal sex listed on their birth certificates. Instead of respecting students' gender identities and/or the gender listed on their legally operative birth certificates, Keller ISD is attempting to categorize students based on their purported "biological sex," which is not a term that is defined in either federal or Texas law nor required for protection under the law. The term "biological sex" is also not defined in this policy, and it is not clear how Keller ISD would determine students' "biological sex" without substantially invading their privacy. Indeed, the American Medical Association (AMA) and other scientific organizations recognize that "biological sex" is not "simple and binary," but is instead based on a variety of characteristics, including someone's anatomy, genetic makeup, and hormones. Because approximately 1.7% of people are born intersex, with many variations possible in genitalia, hormones, internal anatomy, and/or chromosomes, it is scientifically inaccurate and impossible for school districts to set policy based on a binary view of "biological sex."

The policies acknowledge that school districts keep records of students that identify their gender based on their birth certificate, but they seemingly allow Keller ISD administrators to challenge or second-guess students' official birth certificates. The policy could lead school administrators to ask whether the sex listed on students' birth certificates was "[e]ntered at or near the time of the person's birth" or "[m]odified only to the extent necessary to correct any type of scrivener or clerical error in the person's biological sex."

It is deeply invasive and unlawful for school administrators to interrogate students' private medical information in this way. School districts have no right to demand information about students' genitalia, hormones, internal anatomy, or chromosomes. But Keller ISD seeks to authorize school administrators to interrogate students' private medical information and to make a determination into a student's "biological sex," regardless of the legal sex on that student's birth certificate. Such an invasion of student privacy and discriminatory targeting of transgender, non-binary, and intersex students violate Title IX, as multiple courts across the country have recognized.

## **II. CS (Local) Violates Title IX**

It is unlawful for Keller ISD to categorically ban transgender students from accessing multi-user facilities that align with their gender identity. Across the country, federal courts have overwhelmingly found that public school districts cannot exclude transgender students from multi-user, sex-separated facilities that align with their gender identity.<sup>11</sup> Courts have repeatedly

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<sup>11</sup> See, e.g., *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1050–54 (7th Cir. 2017) (providing a single-user bathroom to a transgender student while denying him

interpreted federal prohibitions on sex discrimination to protect transgender people from discrimination. In June 2020, the Supreme Court ruled in a 6-3 decision that Title VII’s prohibition on discrimination “because of sex” protects transgender people from discrimination.<sup>12</sup> This precedent bolsters the rationale relied on by federal courts to resoundingly find that federal nondiscrimination laws require government entities to grant transgender students access to sex-separated facilities in accordance with their gender identity.

Federal court decisions in this area recognize the deeply harmful effects of forcing transgender students to use separate restrooms from their peers, even when those restrooms are single-user facilities. As the Third Circuit recently explained, requiring “transgender student[s] to use the single-user facilities’ under an assigned-at-birth-based bathroom policy ‘would very publicly brand all transgender students with a scarlet ‘T’” that would ostracize these students from their peers and expose them to bullying and harassment.<sup>13</sup> The Seventh Circuit also found that requiring transgender students to use single-user facilities “actually invited more scrutiny and attention from [their] peers” and led to increased anxiety and depression for transgender students.<sup>14</sup>

The federal government has also made clear that public school districts violate the Constitution and Title IX when they try to exclude transgender students from sex-segregated facilities that align with their gender identity. This Department has stated that public school districts may be putting their federal funding at risk if they discriminate against transgender students and has already opened investigations into school districts in Texas that violate Title IX under similar circumstances.<sup>15</sup>

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access to the boys’ bathroom likely violated student’s rights under Title IX and the Equal Protection Clause); *Dodds v. United States Dep’t of Educ.*, 845 F.3d 217, 221–22 (6th Cir. 2016) (injunctive relief was warranted to allow transgender female student to use the girls’ bathroom); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704, 715–26 (D. Md. 2018) (preventing a transgender male student from changing in the boys’ locker room stated a claim under Title IX and the Equal Protection Clause); *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 323 F. Supp. 3d 1030, 1037–39 (S.D. Ind. 2018) (transgender male student who was prevented from using the boys’ locker room or restroom was likely to succeed on merits of claims under Title IX and the Equal Protection Clause); *A.H. by Handling v. Minersville Area Sch. Dist.*, 290 F. Supp. 3d 321 330–32 (M.D. Pa. 2017) (preventing a transgender female student from using the girls’ locker room and bathroom stated a claim under Title IX and the Equal Protection Clause); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1226 (9th Cir. 2020); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 530 (3d Cir. 2018). *But see Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 798 (11th Cir. 2022) (en banc).

<sup>12</sup> *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020).

<sup>13</sup> *Doe*, 897 F.3d at 530.

<sup>14</sup> *Whitaker*, 858 F.3d at 1045.

<sup>15</sup> *See Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families*, U.S. Dep’t of Justice and Education (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>; En Banc Brief for the United States as Amicus Curiae, *Adams v. School Board of St. John’s County*, Case No. 18-13592 (11th Cir. Nov. 26, 2021), <https://www.justice.gov/crt/case-document/file/1458461/download>.

Further, countless principals and superintendents have explained that parents' concerns and school administrators' fears are often based on prejudice and misunderstandings. But across the country and here in Texas, thousands of transgender students have been using multi-user restrooms that align with their gender identity without any issues.<sup>16</sup> As the Fourth Circuit noted in *Gavin Grimm v. Gloucester County School Board*, school administrators' fears about allowing transgender students to use multi-use restrooms are unfounded. "No one questions that students have a privacy interest in their own body when they go to the bathroom. But the [School] Board ignores the reality of how a transgender child uses the bathroom: by entering a stall and closing the door."<sup>17</sup>

### III. FI (Local) Violates Title IX

The proposed FI (Local) would discourage the use of affirming pronouns that correspond to a student's gender identity. The policy allows and encourages any student or staff member to purposefully misgender<sup>18</sup> other students at school. However, it is a legal imperative under Title IX that districts take steps to ensure that students are free from gender-based harassment at school, which includes being deliberately called pronouns that do not align with who they are.

Courts across the country have recognized that deliberately refusing to address transgender individuals by the pronouns consistent with their gender identity can constitute gender-based harassment under the Constitution and anti-discrimination law.<sup>19</sup> This Department has also recognized that declining to use students' affirming pronouns violates Title IX.<sup>20</sup>

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<sup>16</sup> Brief of Amici Curiae School Administrators from Thirty-One States and the District of Columbia at 7, *Gloucester Cnty. Sch. Bd. v. G.G.*, 136 S. Ct. 2442 (2017) (No. 16-273), <http://www.scotusblog.com/wp-content/uploads/2017/03/16-273-bsac-school-of-administrators-from-thirty-one-states-and-the-dis.pdf> (describing numerous examples in which transgender students have been able to use multi-user bathrooms without problems).

<sup>17</sup> *Grimm*, 972 F.3d at 613 (quoting *Whitaker*, 858 F.3d at 1052).

<sup>18</sup> Misgendering occurs when someone uses pronouns to refer to another person that do not match how that person identifies.

<sup>19</sup> See, e.g., *Doe v. City of New York*, 976 N.Y.S.2d 360 (N.Y. Sup. Ct. 2013) (holding transgender woman had sufficiently alleged discrimination under state sex discrimination law when the state HIV/AIDS Service Administration continued to address her by her former male name and male pronouns); *Burns v. Johnson*, 829 F.3d 1 (1st Cir. 2016) (plaintiff's allegations, including employer's purposeful and condescending use of the pronoun "she" to a male transgender employee, supported a reasonable inference of discrimination on the basis of sex); see also *OCR Instructions to the Field re Complaints Involving Transgender Students*, Dep't. of Educ. Office for Civil Rights (June 5, 2017), <https://assets.documentcloud.org/documents/3866816/OCR-Instructions-to-the-Field-Re-Transgender.pdf> ("refusing to use a transgender student's preferred name or pronouns when the school uses preferred names for gender-conforming students or when the refusal is motivated by animus" is an example of gender-based harassment).

<sup>20</sup> *Confronting Anti-LGBTQI+ Harassment in Schools*, Department of Education (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>.

#### IV. CS (Local) and FI (Local) Will Harm Keller ISD Students, Particularly Transgender, Non-Binary, and Intersex Students

By allowing Keller ISD administrators to interrogate any student’s purported “biological sex,” these policies could lead to immense and irreparable harm against all students in the district, since anyone could be subject to invasive questions about their genitalia, hormones, internal anatomy, and/or chromosomes at any time. These policies also specifically harm transgender, non-binary, and intersex students by eliminating their access to the multi-user restrooms with their peers, and the right to be addressed by the pronouns that align with their gender identities.

When transgender students are excluded from using facilities that match who they are and are separated from all other students, as they will be under CS (Local), the mental health outcomes can be catastrophic. When restroom access is denied, one in three transgender students report attempting suicide in the year following that decision and one in five report attempting to end their life multiple times.<sup>21</sup> Conversely, allowing transgender students to use restrooms that match who they are has been shown to reduce depression, suicidal ideation, and suicide attempts.<sup>22</sup>

These serious and devastating consequences have been recognized by the American School Counselor Association, the National Association of Elementary School Principals, the National Association of School Psychologists, and the National Association of Secondary School Principals, which have all affirmed that “[h]aving support at school and acknowledging a student’s right to use the bathroom consistent with their gender identity is critical. A negative school experience not only hinders a transgender student’s academic achievement and growth but can also interfere with their long-term health and well-being.”<sup>23</sup>

Further, when school administrators misgender transgender, non-binary, and intersex students—as they will be allowed and even encouraged to do under FI (Local)—it can cause immense and irreparable trauma and harm and spur bullying and harassment from other students. A student’s need to undergo gender transition during their school years—including through the use of affirming pronouns—is part of the essential process of living consistently with their authentic self.<sup>24</sup> When transgender students are able to use their affirming name and pronouns at school, they are 29% less likely to experience suicidal ideation and 56% less likely to attempt

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<sup>21</sup> Myesha Price-Feeney, et al., *Impact of Bathroom Discrimination on Mental Health of Transgender and Non-Binary Youth*, *Journal of Adolescent Health* (Dec. 4, 2020), [https://www.jahonline.org/article/S1054-139X\(20\)30653-4/fulltext](https://www.jahonline.org/article/S1054-139X(20)30653-4/fulltext).

<sup>22</sup> *Id.*

<sup>23</sup> *Transgender Students and School Bathrooms*, *Gender Spectrum* (2019), <https://genderspectrum.org/articles/bathroom-faq>.

<sup>24</sup> *Id.*

suicide.<sup>25</sup> School boards’ decisions to require or encourage the use of affirming pronouns therefore have a direct and immediate positive impact on students’ mental health.

Keller ISD chose to enact these policies at a time of extreme hostility for Texas LGBTQI+ youth, and they are a cruel escalation of the attacks on an already vulnerable group in Keller ISD. In addition to the challenges and worries that all youth face, transgender and non-binary young people have recently faced significant stigmatization, harm, and discrimination here in Texas. Phone calls to mental health crisis hotlines for LGBTQI+ youth have skyrocketed in the state. During 2021, when the Texas Legislature debated dozens of bills targeting transgender youth, the Trevor Project received more than 14,500 calls, texts, and messages from LGBTQI+ youth in Texas in need of support.<sup>26</sup> This year has posed similar, and more severe, challenges, as transgender and non-binary youth in Texas have endured attacks and restrictions on their health care, their ability to play sports, their access to inclusive educational materials, and their very existence. Amid similar legislative attacks across the country, forty-one percent of LGBTQI+ youth “seriously considered attempting suicide in the past year—and young people who are transgender, nonbinary, and/or people of color reported higher rates than their peers.”<sup>27</sup> Tragically, 14% percent of LGBTQI+ youth attempted suicide this the past year, including nearly one in five transgender and nonbinary young people.<sup>28</sup>

Keller ISD’s new discriminatory policies—especially when considered in conjunction with the district’s November 2022 “gender fluidity” book ban—will exacerbate the pervasively hostile atmosphere for LGBTQI+ students in Keller ISD. The policies will allow and encourage bullying and harassment and require serious invasions of medical privacy. The undersigned organizations committed to LGBTQI+ equality and education equity request that the Office of Civil Rights investigate Keller ISD for its violation of Title IX. In light of the serious risks of harm to LGBTQI+ students from Keller ISD’s policies, time is of the essence.

Sincerely,

American Civil Liberties Union of Texas

Children’s Defense Fund—Texas

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<sup>25</sup> Stephen T. Russell, et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, *J. Adolesc. Health* (Oct. 2018), <https://pubmed.ncbi.nlm.nih.gov/29609917/>.

<sup>26</sup> Josh Weaver, *The Trevor Project Reaffirms Support for Texas Trans Youth, Supportive Parents, and its Crisis Counselors Against Unlawful Attacks*, The Trevor Project (Feb. 24, 2022), available at <https://www.thetrevorproject.org/blog/the-trevor-project-reaffirms-support-for-texas-trans-youthsupportive-parents-and-its-crisis-counselors-against-unlawful-attacks/>.

<sup>27</sup> See THE TREVOR PROJECT, 2023 U.S. NATIONAL SURVEY ON THE MENTAL HEALTH OF LGBTQ YOUNG PEOPLE (2023), <https://www.thetrevorproject.org/survey-2023/>.

<sup>28</sup> *Id.*



Equality Texas

Human Rights Campaign

IDRA (Intercultural Development Research Association)

Resource Center

Transgender Education Network of Texas (TENT)

Texas Freedom Network (TFN)

# Exhibit 1

To the extent permitted by law, schools will maintain separate restrooms, locker rooms and other similar facilities designated for and used only by persons based on the person's biological sex. Individuals are required to use the facility that corresponds to their gender assigned at birth.

This policy does not prohibit the district from providing reasonable accommodations upon request. Reasonable accommodations may be made for ~~students~~ any person seeking privacy (i.e. single user restroom). Any information related to accommodations should be handled in such a way as to protect the student's individual's privacy.

In accordance with law, a person's biological sex is identified on the person's official birth certificate provided the statement was:

1. Entered at or near the time of the person's birth; or
2. Modified only to the extent necessary to correct any type of scrivener or clerical error in the person's biological sex.

[See Birth Certificate Statement in FM(LEGAL)]

For the purposes of this policy, "restroom or ~~changing facility~~ locker room" means a location where a person may reasonably be in a state of undress, including a ~~restroom, locker room, or~~ shower room.

# Exhibit 2

**Objectives**

District staff, educators, and other District employees shall not promote, encourage, or require the use of pronouns that are inconsistent with a student's or other person's biological sex as it appears on the individual's birth certificate or other government-issued record.

In accordance with law, a person's biological sex is identified on the person's official birth certificate provided the statement was:

1. Entered at or near the time of the person's birth; or
2. Modified only to the extent necessary to correct any type of scrivener or clerical error in the person's biological sex.

Notwithstanding the foregoing, the District shall not compel District personnel or other students to address or refer to students in any manner that would violate the speaker's constitutionally protected rights.

[See Birth Certificate Statement in FM(LEGAL)]

# Exhibit 3



November 21, 2022

Office for Civil Rights  
U.S. Department of Education  
Renaissance Tower  
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Dallas, Texas 75270

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*Sent Via E-mail*

**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.<sup>1</sup> 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

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<sup>1</sup> 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."<sup>2</sup> 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)."<sup>3</sup>

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.

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<sup>2</sup> 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").

<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup> At least 18 of those 41 books, or 44%, related to themes of LGBTQ+ inclusion.<sup>6</sup> 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

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

<sup>5</sup> 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).

<sup>6</sup> 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.”<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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.*”<sup>11</sup> 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

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<sup>7</sup> Dr. Charles Randklev, Keller ISD Board of Trustees, Place 6 (Nov. 13, 2022), [www.facebook.com/DrCharlesRandklev/](https://www.facebook.com/DrCharlesRandklev/).

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

<sup>9</sup> 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/>.

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

<sup>11</sup> 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-2f8e47215c63>.

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.<sup>12</sup> 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.”<sup>13</sup>

- 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.”<sup>14</sup> This comment led to whooping and applause from the meeting audience.<sup>15</sup>
- 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.<sup>16</sup>

### **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.”<sup>17</sup> 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.”<sup>18</sup>

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

<sup>13</sup> *Id.* at ~ 3:14:30.

<sup>14</sup> 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.

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

<sup>16</sup> *Id.* at ~ 3:09:45.

<sup>17</sup> *Id.* at ~ 3:12:00.

<sup>18</sup> 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.<sup>19</sup>

Federal law bars discrimination on the basis of sexual orientation or gender identity, as Department of Education guidance recognizes.<sup>20</sup> 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.”<sup>21</sup> 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.”<sup>22</sup>

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.

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<sup>19</sup> 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/>.

<sup>20</sup> *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>.

<sup>21</sup> 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).

<sup>22</sup> *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)