

# BERKSHIRE HILLS REGIONAL SCHOOL DISTRICT

GREAT BARRINGTON • STOCKBRIDGE • WEST STOCKBRIDGE

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February 16, 2024

On January 11, 2024, the Berkshire Hills Regional School Committee voted to commission an independent investigation by an outside investigator into the events surrounding the Great Barrington Police search of a classroom at the W.E.B. DuBois Middle School on December 8, 2023. The School Committee has received the Investigator's report and, consistent with its pledge to be transparent regarding this matter, is today making the report available to the public. The School Committee will carefully consider the findings of the report in its future work around improving policies and procedures, and expects that there will be opportunity for public discussion at an upcoming School Committee meeting.

Sincerely,

Stephen Bannon

School Committee Chair



Berkshire Hills Regional School District  
Investigative Report  
December 8, 2023 - Police Search  
W.E.B. Du Bois Regional Middle School

Kevin M. Kinne  
Cohen Kinne Valicenti & Cook LLP  
February 16, 2024



## INVESTIGATIVE REPORT

**To:** School Committee, Berkshire Hills Regional School District

**From:** Kevin M. Kinne, Cohen Kinne Valicenti & Cook LLP

**Date:** February 16, 2024

**Re:** External, Independent Investigation

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### I. Introduction

On December 8, 2023, a police investigator (“Officer O’Brien”) from the Town of Great Barrington Police Department (the “GBPD”) entered the W.E.B. Du Bois Regional Middle School (the “School”) as part of an investigation into a complaint (the “Complaint”) made the same day to the GBPD. The Complaint included allegations against several members of the School community, including claims against an 8<sup>th</sup> grade English Language Arts teacher at the School (the “Teacher”). The Complaint also made allegations concerning a book titled “Gender Queer” (the “Book”).

On January 5, 2024, Attorney Howard M. Cooper (“Attorney Cooper”) sent a letter to Stephen Bannon (“Mr. Bannon”), in his capacity as Chair of the Great Barrington Selectboard, and Dr. Peter Dillon (“Dr. Dillon”), in his capacity as Superintendent of the Berkshire Hills Regional School District (the “District”). Attorney Cooper represents the Teacher. In his letter, Attorney Cooper requested that the District conduct an independent investigation into the events involving the Teacher on December 8, 2023, including, without limitation, determining how and by whom the Complaint was initiated against the Teacher and the decision-making process that took place after the District was notified of the Complaint.

On January 8, 2024, the District initially inquired into the possibility of retaining Cohen Kinne Valicenti & Cook LLP (“Cohen Kinne”) to conduct an external, independent investigation (“Independent Investigation”) into the issues raised by Attorney Cooper and related issues. On January 11, 2024, I met with the District’s School Committee (“School Committee”) in Executive Session. That same evening, following the Executive Session, the School Committee voted unanimously in Open Session to (a) commence the Independent Investigation, and (b) retain Cohen Kinne to conduct the Independent Investigation.

On January 16, 2024, the District formally engaged Cohen Kinne and agreed that I would be the person supervising the investigation (“Investigator”). I am a founding partner of Cohen Kinne and Chair the firm’s School and College Investigation practice. Although the District committed to being the party financially responsible for paying all fees and expenses related to the Independent Investigation, the District confirmed and understood that the Investigator’s work during the investigation would be impartial and independent.

Although the Independent Investigation included an examination of relevant documents, data and interview information from the GBPD, the Investigator was not retained to assess the role of the GBPD and/or the Town – including (a) the propriety of Officer O’Brien’s search from GBPD’s perspective, (b) whether his use of the body cam was consistent with established guidelines, (c) whether the Teacher should have been read her rights before being questioned, (d) whether the GBPD should have withheld the identity of the person who made the Complaint, and (e) whether the GBPD has (or should have) a protocol in place to consult with Town Counsel or another resource outside of the District Attorney’s Office on matters involving the District. The Town may be conducting its own investigation to address these issues. The Independent Investigation also is not responsible for determining whether the Book should be available to students in the School. That decision is reserved for the District, following District policies.

## II. Issues For Investigation

At the request of the School Committee, the Independent Investigation examined the following specific issues for purposes of making findings of fact:

- How and by whom was the Complaint initiated with the GBPD?
- What was the timeline and details of events that took place on December 8, 2023, after the Complaint was initiated with the GBPD, including the role of District employees?
- Did District employees comply with District policies with respect to the Complaint and Officer O’Brien’s investigation at the School on December 8, 2023.
- Were the acts and/or omissions of District employees and/or representatives motivated by an effort to discriminate against a member or members of the LGBTQIA+ community and/or any other legally protected class?

## III. Investigative Procedure

In accordance with District policy, the issues identified above were investigated fully and fairly. The Investigator conducted the Independent Investigation in accordance with the following procedures for the purpose of assuring prompt and fair attention to the issues identified above:

1. Interviewed the Teacher to understand her perspective and the concerns raised in Attorney Cooper’s letter dated January 5, 2024.
2. Identified people who may possess information relevant to Independent Investigation for the purpose of interviewing them.
3. Worked with a District representative and a Town of Great Barrington representative to notify people selected for an interview and schedule interviews.
4. Provided union members and union representatives with an opportunity to have union representation and/or the presence of a support person at all interviews.
5. Conducted interviews in person (and one by phone), including interviews of 15 current and/or former District and GBPD employees.
6. Gathered, reviewed and analyzed documents and information relevant to the Independent Investigation.
7. Analyzed the facts compiled during the Independent Investigation.
8. Prepared this Investigative Report.

#### IV. Relevant District Policies and Memorandum of Understanding

The following District Policies and a Memorandum of Understanding are relevant to this Independent Investigation:

##### **A. POLICY KEC - PUBLIC COMPLAINTS ABOUT THE CURRICULUM OR INSTRUCTIONAL MATERIALS**

The BHRSD School Committee, though it is ultimately responsible for all curriculum and instructional materials (including library books), recognizes the need and right of students to free access to many different types of books and materials. It also recognizes the right of the professional staff to select books and other materials supportive of the District's educational philosophy and goals.

Criticism of a book or other materials used in the District may be expected from time to time. In such instances:

1. If a parent requests that his/her own child not read a given book, the teacher and/or Principal should resolve the situation, perhaps by arranging for use of alternative material meeting essentially the same instructional purpose. This does not apply however, to basic program texts and materials that the School Committee has adopted.
2. The School Committee will not permit any individual or group to exercise censorship over instructional materials and library collections, but recognizes that at times a reevaluation of certain material may be desirable. Should an individual or group ask to have any book or other material withdrawn from school use:
  - a. The person who objects to the book or other material will be asked to sign a complaint on the standard form on which he/she will document his/her criticism.
  - b. Following receipt of the formal complaint, the Superintendent will provide for a reevaluation of the material in question. He/she will arrange for the appointment of a review committee from among the faculty to consider the complaint.
  - c. The Superintendent will review the complaint and the committee's reevaluation and will render a decision in the matter. Should the decision be unsatisfactory to the complainant, he/she may appeal it to the School Committee.

In summary, the School Committee assumes final responsibility for all books and instructional materials it makes available to students; it holds its employees accountable for their proper selection. It recognizes rights of individual parents with respect to controversial materials used by their own children; it will provide for the reevaluation of materials in library collections upon

formal request. On the other hand, students' right to learn and the freedom of teachers to teach will be respected.

## **B. POLICY KEB - PUBLIC COMPLAINTS ABOUT DISTRICT EMPLOYEES**

Complaints about District employees will be investigated fully and fairly. However, before any such complaint is investigated, the complainant must submit his/her complaint in writing. Anonymous complaints will be disregarded.

Whenever a complaint is made directly to the School Committee as a whole or to a School Committee member as an individual, it will be referred to the school administration for study and possible solution.

The Superintendent will develop, for approval by the School Committee, procedures that assure prompt and fair attention to complaints against District employees. The procedures will require that an employee who is the object of a complaint be informed promptly and be afforded the opportunity to present the facts as he/she sees them.

## **C. POLICY KI - VISITORS TO THE DISTRICT**

The BHRSD School Committee encourages parents and guests to visit classrooms to observe and learn about the instructional programs taking place in our District. Such visits can prove most beneficial in promotion of greater school-home cooperation and community understanding of how we carry out the District's mission and goals.

Visits by parents to several classrooms in a given grade for the purposes of comparing teaching styles to provide a basis for a request for student assignment to a particular teacher are strongly discouraged because the District's policy of assigning a student to a particular class is the sole responsibility of the building Principal in consultation with the employees of that school.

The following guidelines to classroom and school visits should be followed:

1. Parental requests for classroom visitations will be welcomed as long as the educational process is not disrupted. To this end we request that such requests be made in advance to allow for proper arrangements to be made.
2. The building Principal has the authority to determine the number, times, and dates of observations by visitors. This will be done in consultation with employees so as to give adequate notice to the employees of the impending visits.
3. For security purposes, all visitors must report to the Principal's office upon entering and leaving the building and sign a guest log showing arrival and departure times. Employees will challenge visitors who do not have visible identification.
4. Any student who wishes to have a guest in school must ask permission of one of the administrative employees 24 hours in advance of the proposed visit. If permission is

granted, the guest is expected to follow the standards of behavior expected of all students. Upon arrival the guest must register in the office. Any guest who fails to comply with student regulations will be asked to leave the school building and grounds immediately.

#### **D. POLICY KLG - RELATIONS WITH POLICE AUTHORITIES**

Cooperation with law enforcement agencies is essential for the protection of students, for maintaining a safe environment in the District schools, and for safeguarding all District property.

Relationships between the District and officials of law enforcement agencies in investigative matters concerning pupils will take into consideration the respective roles of the District and law enforcement agencies in assisting and protecting the interests of the community, and ensuring the rights of all concerned.

The School Committee also recognizes the potential enrichment that law enforcement agencies can make in the educational program.

Efforts should be made to develop and maintain a healthy attitude toward law enforcement agencies and personnel to promote better understanding and communication.

#### **E. MEMORANDUM OF UNDERSTANDING BETWEEN THE DISTRICT AND THE GBPD**

In addition to the District's policies, the District and the GBPD entered into a Memorandum of Understanding ("MOU") "in their mutual effort to keep our schools and community safe and to provide a secure partnership against potential threats." The MOU expired in 2021. A full and complete copy of the MOU is attached as **Exhibit 1**.

#### **V. Findings of Fact**

Applying the preponderance of evidence standard, the Investigator makes the following findings of fact:

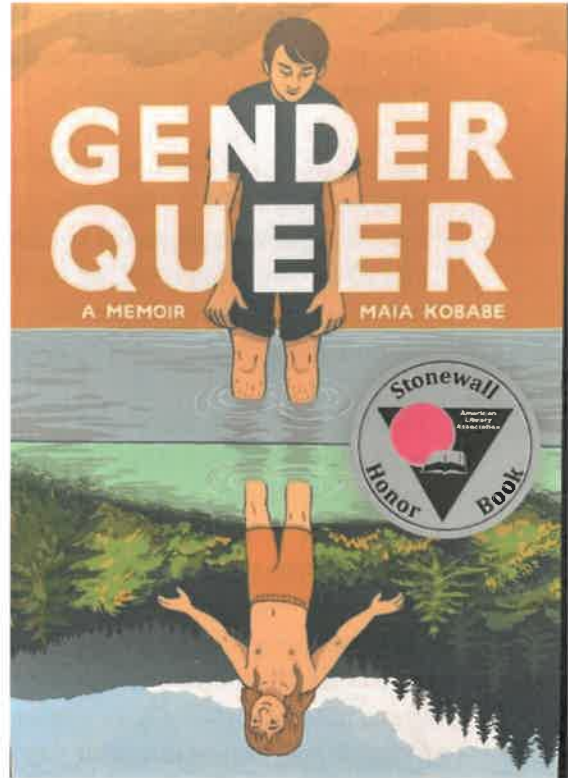
##### **(a) Background Information**

1. The Teacher first became familiar with Great Barrington when she was a student at Bard College at Simon's Rock, the college from which she ultimately graduated with a degree in linguistics and German studies.
2. After college, the Teacher began working in Great Barrington for The Bookloft, a local, independent bookstore. Over the course of five years, she rose to the positions of Book Buyer and Manager before deciding to pursue a career in education.



3. Six years ago, the School hired the Teacher to teach English Language Arts (“ELA”). She has been teaching ELA at the School ever since and currently teaches 8<sup>th</sup> grade students.
4. Her typical workday consists of teaching five separate class sections of ELA, meeting with her team of 8<sup>th</sup> grade teachers and using one period to prepare. In addition, she is a Crew leader working with students to hone their academic and social emotional skills. The Crew program is designed to help students consider what it means to be a responsible member of the School community and what the School community can do to support them.
5. The Teacher is an Instructional Lead at the School, working with the School’s Principal to plan professional development for teachers. She also is part of the School’s governance team.
6. The Teacher serves as an advisor to the local chapter of the Gender and Sexuality Alliance (“GSA”). GSA is essentially a student-run organization. The Teacher makes her classroom available for GSA and provides general supervision to GSA students during lunch period one day/week on Fridays. GSA strives to be an open and inclusive space at the School where students can receive support, socialize and find community together without assumptions or judgment.
7. The classroom where the Teacher teaches is located in Room 203, on the second floor of the School. No other teacher uses that room as their primary classroom, though the Teacher co-teaches in the room with Audrey Console (SPED Math and ELA) and Gail Bouknight-Davis (SPED – Literacy).
8. When the Teacher is teaching (and even when she is not) her classroom door remains open.
9. The Teacher is a well-respected member of the faculty. She has excellent working relationships with the School’s Principal, her professional colleagues and staff members.
10. Teachers who work directly with the Teacher describe her as “talented,” “professional,” “bright,” “welcoming,” and “calm.” Faculty and staff stated that she works hard and keeps order in her classroom while also giving her students agency.

11. More than a dozen District employees were interviewed for the Independent Investigation and all of them said that they have never seen the Teacher engage in any inappropriate conduct with students or otherwise.
12. The Teacher maintains her own classroom library of books in Room 203, including books that she has selected and purchased herself. One section of her classroom library contains books relevant to the GSA. Classroom library books are not maintained in the School’s main library and are not selected or vetted by the School’s Principal or Librarian.
13. The Book at issue in this matter, Gender Queer, was a book that the Teacher purchased herself and brought into her classroom. She first noticed the Book in a bookstore and purchased it in 2022. The Book is not circulated in the School’s library and is not part of the School’s curriculum.



Book cover

14. The School regularly participates in Banned Books Week, an international program that was launched in 1982 in response to challenges to books in libraries, bookstores, and schools. The annual event represents itself as highlighting the value of free and open access to information and brings together the entire book community — librarians, educators, authors, publishers, booksellers, and readers of all types — in shared support of the freedom to seek and to express ideas.
15. The 2023 Banned Books Week took place in the early fall. The theme of the 2023 event was “Let Freedom Read!” The #1 Most Challenged Book for the 2023 Banned Books week was Gender Queer.
16. Because the Book was the Most Challenged Book of the year, the School’s Librarian Jennifer Guerin (“Ms. Guerin”) asked the Teacher if the library could use her personal copy of the Book for a Banned Books Week display in the library. The Teacher agreed and provided the Book to Ms. Guerin from her personal collection so it could be displayed in the library along with other books that had been banned.
17. After seeing the Book on display, one student asked Ms. Guerin if they could check-out the Book. Ms. Guerin told the student that the Book could not be checked out from the library because it belonged to the Teacher. Ms. Guerin encouraged the student to ask the Teacher if they could read the Book and also informed the Teacher that the student might be inquiring about the Book.

18. That one student did follow-up with the Teacher about the Book. After exploring whether the Book was appropriate for the student, the Teacher allowed the student to sign-out the Book. The student returned the Book in October of 2023. No other student, before or after, has signed-out the Book from the Teacher's classroom.

**(b) How and by whom was the Complaint initiated with the GBPD?**

19. Adam Yorke ("Mr. Yorke") initiated the Complaint with the GBPD by making the allegations, in person, at the GBPD headquarters located at 465 Main Street, Great Barrington, MA 01230 ("Police Station").

20. Mr. Yorke began employment with the District as a Night Custodian at the School on October 24, 2022. In that role, Mr. Yorke was assigned to clean second floor classrooms at the School, including Room 203 where the Teacher teaches and where GSA meets.

21. Mr. Yorke's shifts began at 2:30 PM, approximately 10 minutes before students are released from the School for the day.

22. Mr. Yorke took photographs of the Book on or about November 20, 2023, in Room 203, while he was working as a Night Custodian.

23. Mr. Yorke then made the Complaint to the GBPD on December 8, 2023. He entered the Police Station that day at 1:23 PM and left at 1:38 PM.

24. Mr. Yorke relayed the Complaint allegations directly to Officer O'Brien through the reception window in the entrance lobby of the Police Station while Officer O'Brien was on dispatch duty.

25. During his conversation with Officer O'Brien, Mr. Yorke alleged that he: (i) was concerned about images he saw in the Book that he claimed was located on a table in the Teacher's classroom; (ii) observed a student sitting on the Teacher's lap at the School; and (iii) observed that the Teacher and "a few other staff" members were meeting with students in private, discussing subjects related to "LGBTQ material" and telling students not to tell their parents about it. See Narrative of Inv. O'Brien, ¶ 1, attached as **Exhibit 2**.

26. Mr. Yorke then presented Officer O'Brien with three photographs of the Book, including two photographs of the cover page and one photograph of two interior pages. See Great Barrington Police Department, Images Associated With Case Number 23-300-OF, attached as **Exhibit 3**.

27. After leaving the Police Station on December 8, 2023, Mr. Yorke went to the School to begin his shift. He first appeared on the School's security video that day at 2:40:19 PM.

28. In the spring of 2023, Mr. Yorke falsely told another teacher at the School that the Teacher "was teaching kids how to have gay sex." There is no evidence, whatsoever, that the Teacher was doing so.

29. During the same time frame, Mr. Yorke engaged in conversations with teachers and staff members regarding pedophilia that made others uncomfortable and also stated to a teacher that the way to solve gun violence in schools was to allow kids to bring guns to school.

30. Mr. Yorke's supervisors, Steven Soule and Scott Jenny, warned Mr. Yorke that any concerns he might have should be conveyed to them rather than to teachers and staff.



*Mr. Yorke working on 12-8-23*

31. Ignoring that warning, on October 24, 2023, Mr. Yorke confronted a Spanish teacher because he felt that her room needed to be cleaner for the custodians. He then berated the Spanish teacher, told her that the students needed to be better behaved and commented to her that she was not respected because the students were not cleaning up after themselves. He further told the Spanish teacher that because her room was one of the messiest it meant that she had a problem with discipline. He then instructed her, with no qualifications to do so, about how to change the students' behavior.

32. The Spanish teacher promptly complained about Mr. Yorke to the School's Assistant Principal Ellen Rizzo.

33. On October 25, 2023, Mr. Soule suspended Mr. Yorke for two days. Mr. Soule then presented Mr. Yorke with a letter of reprimand, dated November 1, 2023, regarding his poor behavior and poor job performance, including his interactions with the Spanish teacher. Mr. Soule made it clear in writing to Mr. Yorke that any further concerns regarding his behavior would result in his immediate termination from employment with the District.

34. On December 1, 2023, Mr. Yorke contacted the Massachusetts Commission Against Discrimination to file a Charge of Discrimination ("MCAD Charge") against the District regarding his suspension and letter of reprimand.

35. In the MCAD Charge, Mr. Yorke states his belief that the District discriminated against him on the basis of his Race/Color (which he identifies as White) and his alleged Disability (which he identifies as a reading and writing comprehension disability) when he was suspended and given his letter of reprimand.
36. On December 2, 2023, 6 days before he made his Complaint to the GBPD, Mr. Yorke electronically signed his MCAD Charge.
37. Based upon Mr. Yorke's interview during the Independent Investigation, Mr. Yorke had no factual basis for the claims made in the Complaint. Mr. Yorke indicated that he had no knowledge that (a) a student was sitting on the Teacher's lap at the School, or (b) that the Teacher and other staff members were meeting with students in private, discussing subjects related to "LGBTQ material" and telling students not to tell their parents about it. The Independent Investigation found no facts to support those claims against the Teacher.
38. Mr. Yorke also lied during his investigative interview by stating that he did not make the Complaint to the GBPD when, in fact, he did so.
39. As of February 15, 2024, Mr. Yorke is no longer employed by the District.

**(c) Events Following the December 8<sup>th</sup> Complaint to the GBPD**

40. Immediately after Mr. Yorke left the Police Station on December 8, 2023, Officer O'Brien called the Chief of the GBPD, Paul Storti ("Chief Storti"). Chief Storti had taken a half-day off from work and was at his home eating lunch when Officer O'Brien called him.
41. Officer O'Brien informed Chief Storti about the allegations of the Complaint during their call but did not identify the name of the person who brought the Complaint forward.
42. After ending his call with Officer O'Brien, Chief Storti left his home and drove into the Police Station where Officer O'Brien told Chief Storti that although the person who brought the Complaint identified himself to Officer O'Brien and confirmed that he was employed at the School, he did not want to be identified to anyone else due to fear of retaliation.
43. At 1:55 PM, Chief Storti called Dr. Dillon from the Police Station. Their call lasted 8 minutes. During their conversation Chief Storti described the allegations of the Complaint to Dr. Dillon and emphasized his concern regarding the allegations that a teacher was allowing students to sit on the teacher's lap and was asking children to keep information from their parents.
44. Chief Storti also relayed to Dr. Dillon that the Complaint included allegations that the Book contained illustrations depicting oral sex but that the person who complained only showed two pages from the Book.

45. Dr. Dillon asked for the name of the Book. Chief Storti initially did not know the name. After Chief Storti asked Officer O'Brien for the name of the Book, Chief Storti told Dr. Dillon the name. Dr. Dillon and Chief Storti indicated to each other that neither of them was familiar with the Book.



Pages from the Book presented to GBPD

46. Dr. Dillon then asked for the name of the teacher who was identified in the Complaint and Chief Storti provided Dr. Dillon with the Teacher's name.
47. Dr. Dillon also asked for the name of the person who filed the Complaint and Chief Storti stated that he did not know the person's name and that Officer O'Brien would not disclose the name because the person requested anonymity due to fear of retaliation.
48. The allegation that a teacher was allowing a student to sit on her lap was particularly concerning for Dr. Dillon and Chief Storti when they spoke because the claims were similar to criminal allegations made against a former District employee in 2012, when he was charged with allegedly assaulting five minor students from 2003 to 2006.
49. A Berkshire Superior Court jury found the former employee not guilty of all criminal charges in 2014, but a separate civil lawsuit was filed against the District in 2016. The

civil lawsuit asserted, among other allegations, that the former employee allowed an 8-year-old girl to sit on his lap while looking at a computer. Although Dr. Dillon was not employed by the District when the events with the former employee allegedly occurred, he was Superintendent when the civil lawsuit was filed and was involved in the decision to settle the case.

50. Dr. Dillon and Chief Storti agreed that, because the Complaint alleged physical touching of a minor student by a teacher, they needed to look into the Complaint immediately. They discussed the possibility of the GBPD conducting an investigation in a way that would minimize any disruptions at the School, including by having the Police Investigator dress in plain clothes and arrive after the school day ended.
51. Dr. Dillon told Chief Storti that he needed to follow up with the School's Principal, Miles Wheat ("Mr. Wheat"), and would call Chief Storti back after speaking with Mr. Wheat.
52. At 2:05 PM, Dr. Dillon tried to reach Mr. Wheat but he was in a meeting at Muddy Brook Elementary School and did not answer. Just two minutes later, at 2:07 PM, Dr. Dillon and Mr. Wheat spoke by phone for 5 minutes. Dr. Dillon told Mr. Wheat that the Teacher had been accused of (a) allowing children to sit on her lap, (b) telling children to keep information from their parents, and (c) keeping a book in her classroom that contained illustrations depicting oral sex.
53. Mr. Wheat expressed surprise about the allegations concerning the Teacher because he considered her to be an excellent teacher who did not cross physical boundaries with children and because she has an outstanding reputation amongst her colleagues, parents and students. Mr. Wheat also told Dr. Dillon in that call that he had never heard of the Book.
54. Dr. Dillon called Chief Storti back at 2:13 PM and said that Mr. Wheat was surprised about the allegations against the Teacher and also was not familiar with the Book. They then agreed to proceed with a plan to have Officer O'Brien conduct an on-site investigation at the School that day, after school ended, in plain clothes. Dr. Dillon told Chief Storti that he would follow up with Mr. Wheat to coordinate the plan.
55. Chief Storti, in the meantime, called another police officer "off the road" and into the Police Station to replace Officer O'Brien on dispatch so he could conduct the on-site investigation.
56. At 2:17 PM, Dr. Dillon called Mr. Bannon, in his capacity as School Committee Chair, to apprise him of the situation in the same manner that he described it to Mr. Wheat. Their call lasted 6 minutes.
57. One minute after finishing his call with Mr. Bannon, Dr. Dillon called Mr. Wheat back. By that time, Mr. Wheat was back in his office at the School. The second call between them lasted for 5 minutes. Dr. Dillon made it clear to Mr. Wheat that he needed to cooperate with the GBPD regarding its investigation and "follow their lead." Dr. Dillon

also told Mr. Wheat that he should not give the Teacher advance notice of the investigation so as not to interfere with Officer O'Brien's work. Dr. Dillon confirmed that Mr. Wheat would be present to meet with Officer O'Brien when he arrived at the School.

58. Dr. Dillon then told Chief Storti, in a brief conversation, that Mr. Wheat would be present at the School and would cooperate with Officer O'Brien.



*Officer O'Brien Entering the School*

59. At 2:39 PM, just minutes after classes ended for the day, Officer O'Brien arrived at the School's entrance, dressed in plain clothes. He rang the intercom in the vestibule and announced to the person who answered that he was there to meet with Mr. Wheat. The School receptionist allowed him to enter the School and he proceeded directly to Mr. Wheat's office on the first floor.

60. Between 2:39 PM and 2:44 PM, Officer O'Brien and Mr. Wheat met in Mr. Wheat's office. During that meeting, Officer O'Brien introduced himself and provided Mr. Wheat with clarification regarding the allegations against the Teacher.

61. Officer O'Brien stated that the Complaint alleged that the Teacher had allowed students to sit on her lap and that she and "a few other staff" members were meeting with students outside of classroom time during the

school day. Mr. Wheat learned that the other staff members identified as part of the Complaint were Julian Park ("Mr. Park") and Ms. Guerin.

62. Mr. Wheat told Officer O'Brien that he did not believe students had been sitting on the Teacher's lap and had no concerns about her. Mr. Wheat also explained that classroom doors are kept open when children are in the rooms. Mr. Wheat dismissed the idea that the Teacher, Mr. Park and Ms. Guerin were doing anything wrong by meeting with students outside of classroom time during the school day because "that's part of their jobs."

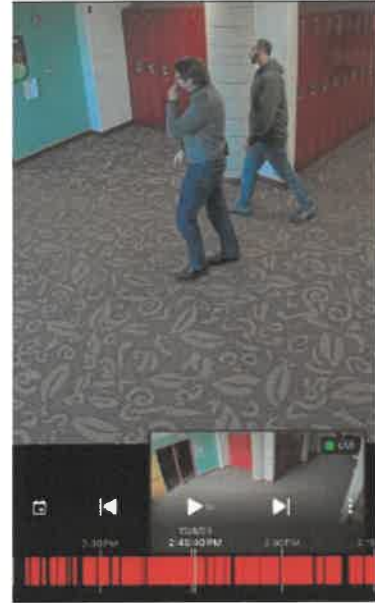
63. Mr. Wheat confirmed to Officer O'Brien that he had received no complaints or concerns about inappropriate behavior by the Teacher, whatsoever.



64. After Mr. Wheat's endorsement of the Teacher and the fact that there was no identified witness, date or context with respect to the allegations concerning her personally, Officer O'Brien's focus shifted to finding the Book so it could be reviewed in its full context beyond just the two pages (and book cover photos) presented by Mr. Yorke when he made his Complaint.

65. At 2:45 PM, Mr. Wheat and Officer O'Brien went to the second floor of the School and headed to the Teacher's classroom. Because Mr. Wheat felt that the Teacher was no longer personally the subject of Officer O'Brien's investigation, he asked Officer O'Brien's permission to speak with the Teacher about the reason for Officer O'Brien's visit to her classroom. Officer O'Brien agreed. When they arrived at Room 203, however, the Teacher was not there.

66. At 2:46 PM, Mr. Wheat walked by himself from the Teacher's classroom to the School's library, where she was buying books on the last day of the annual Scholastic Book Fair. Mr. Wheat asked to speak with the Teacher in a library office. When they arrived in the library office, they had a brief conversation during which Mr. Wheat asked the Teacher if she was aware of the Book. She answered affirmatively and described it to Mr. Wheat as a "coming-of-age" book with LGBTQIA+ content. Mr. Wheat told the Teacher that the GBP D received a complaint about the Book and that an officer was in the School looking for it.



*Mr. Wheat and Officer O'Brien in hallway*



*Leaving the library*

67. At 2:49 PM, Mr. Wheat and the Teacher left the library and walked back towards her classroom. Officer O'Brien was waiting in the hallway outside of Room 203. Mr. Wheat and the Teacher went into the classroom briefly ahead of Officer O'Brien to see if the Book was on the shelf located right in front of the classroom door but they could not see it. Officer O'Brien then entered the classroom, shut the door behind him and turned on his body cam video. Mr. Wheat then introduced the Teacher to Officer O'Brien.

68. A full transcription of the conversation that took place while the body cam was turned on is attached as **Exhibit 4**. The full body cam video can be viewed at the following link:

<https://www.youtube.com/watch?v=PGXuH6E1CXk>

69. Views of the classroom are obstructed on the body cam video. For reference, Classroom 203 is depicted in the following photographs:



*Photos of Classroom 203*

70. The video camera was attached to Officer O'Brien's belt and obscured by the sweatshirt he was wearing while in the classroom. The shuffling noises heard on the body cam footage were caused by Officer O'Brien moving papers around on the Teacher's desk and moving books around on bookshelves. Officer O'Brien touched and looked at papers that included student work and books related to curriculum. The Book was not located in the classroom.

71. The Teacher described the experience of the search as “terrifying.” She identified herself as “Mexican-American and Queer” and stated that she grew up believing that people with



a similar identity “have to comply with the police” or else there could be adverse consequences. She felt that she could not leave the classroom because the door was shut and Officer O’Brien was initially standing in the door area making her feel that the exit out of the room was blocked. She had no understanding of her legal rights and did not know if she would be arrested or what else might possibly happen to her if the Book was found during the search.

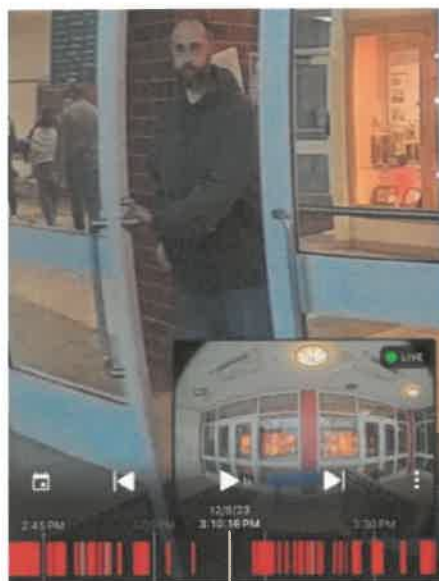
72. At 2:57 PM, Mr. Wheat and Officer O’Brien walked out of the classroom and headed back down the hallway to return to Mr. Wheat’s first-floor office. The Teacher walked behind them in the second-floor hallway and returned to the library.

73. At 2:58 PM, Mr. Wheat and Officer O’Brien re-entered Mr. Wheat’s office and spoke for approximately 10 minutes. During that conversation, Mr. Wheat reiterated his support for the Teacher, Mr. Park and Ms. Guerin and again disputed the allegations that had been made against them. Officer O’Brien asked who else may have possession of the Book and Mr. Wheat explained that he had never even heard of the Book before that afternoon so he had no idea who might possess the Book. Officer O’Brien explained that, based upon the limited information he had on the book in the form of the two

*Immediately after the search ended*

pages that had been presented to him at the Police Station, it was important to see the whole book to determine whether the Book could be considered “obscene” material that cannot be disseminated to minors. Officer O’Brien requested that Mr. Wheat check the School to see if he could locate the Book after Officer O’Brien departed and then he provided his contact information to Mr. Wheat.

74. At 3:10 PM, Officer O’Brien left the School out of the same front doors he previously entered through. He was on site at the School for a total of 31 minutes that day.



*Officer O’Brien leaving the School*

75. When the Teacher returned to the library after the room search, Ms. Guerin was there along with Lynn Casella (“Ms. Casella”) who works at the School as a Clinician and is a licensed clinical social worker.
76. The Teacher told Ms. Guerin and Ms. Casella that a police officer had been in her classroom searching for and questioning her about the Book while operating a body cam. Ms. Guerin described the Teacher as appearing “nervous, scared, unsettled and on the verge of tears.” Ms. Casella described her as being “choked up with tears in her eyes.”
77. After Officer O’Brien left the School, Mr. Wheat went back to the second floor to follow up with the Teacher and find out how she was doing. The Teacher was distraught and tried to compose herself because she was crying from the “traumatic experience.” She appreciated that Mr. Wheat was being supportive and that he reassured her that she had done nothing wrong, but she expressed that the GBPD never should have been allowed into her classroom in the first place.
78. While Officer O’Brien was at the School, Chief Storti was doing internet research to learn more about the Book because Dr. Dillon was not familiar with the Book and it was not part of the regular School curriculum. Chief Storti tried to locate additional illustrations from the Book beyond just the photograph of the two pages of illustrations provided by Mr. Yorke. Chief Storti found additional photographs of pages from the Book online and sent the following link to Dr. Dillon by email at 3:20 pm on December 8, 2023: <https://theiowastandard.com/shocking-images-from-book-gender-queer-which-is-stocked-in-school-libraries-across-iowa/>. Chief Storti’s email message to Dr. Dillon simply said, “I found this site about the book in question.”
79. At 3:31 PM, Dr. Dillon wrote back to Chief Storti, as follows: “Thanks for sharing – lots of debate on this book split in what appears to be political lines. Some are very upset about it and some are giving it awards. Miles and I will check in and gather some additional information.”
80. In the meantime, Chief Storti asked Officer O’Brien to contact the Berkshire County District Attorney’s Office (the “DA’s Office”), which he did that afternoon. Officer O’Brien spoke with Assistant District Attorney Andrew Giarolo (“ADA Giarolo”) and provided him with the background information about the matter.
81. At 4:10 PM, ADA Giarolo sent an email to District Attorney Timothy Shugrue (“DA Shugrue”) and First Assistant District Attorney Marianne Shelvey (“FADA Shelvey”) in which he wrote, as follows:

I just returned a call from Joe O’Brien. Apparently, the LGBTQ Club at Monument had a book in its lending library that is very controversial. The book is called “Gender Queer” by Maia Kobabe. A parent made GBPD aware of this book being available to students. The book is a graphic novel (comic book) memoir, but includes a number of sexually explicit cartoons and historical images including one cartoon that arguably is two boys engaging in oral sex. Joe went to

the school and the book was no longer in the library, but thought it may have been checked out by another teacher.

The 8th grade teacher who manages the library and leads the club was very cooperative and admitted that the book was there and available to students. The principal and superintendent were present as well and cooperative. They were going to continue speaking quietly with other teachers about the book. Joe will go back and obtain copies of the signout slip just in case we decide to move forward with any kind of prosecution to show that a minor actually viewed the images. Here is a link to the Wikipedia page: [https://en.wikipedia.org/wiki/Gender\\_Queer](https://en.wikipedia.org/wiki/Gender_Queer). Legally, we would have two major issues, namely does this book qualify as “obscene” and did any minor actually view these images. As to the former, there may be some artistic, literary, etc merit to these images in context and they are not likely intended to appeal to the prurient interest. As you will see, the book has stirred up controversy nationwide and some jurisdiction have banned the book. Joe was looking for guidance on moving forward. I told him we should await instructions from the DA due to the nature of this allegation. He is fine with that and will continue his investigation.

Redacted copies of the email exchanges involving DA Shugrue, ADA Giarolo and FADA Shelvey, are attached as **Exhibit 5**.

82. In an email response four minutes later, at 4:14 PM, DA Shugrue wrote back to ADA Giarolo, as follows:

This book needs to be out of that school forever right now- I don't care if it's artistic- if it depicts graphic sexual illustrations it has no place for minors to view and observe- do we allow heterosexual illustrated sexual books in the library? I do not think so

See **Exhibit 5**.

83. ADA Giarolo immediately wrote back the following message to DA Shugrue: “Relayed to Joe O’Brien. He and the Chief will get on it.” See **Exhibit 5**.
84. Chief Storti, however, responded by telling Officer O’Brien on December 8, 2023: “We are not going back to get the book, we met our due diligence obligations regarding the allegations against the teacher and now that we know more about the book, we are not going to do any more. If the DA’s Office wants to pursue this further then it will be up to them.”
85. At 5:59 PM, Mr. Wheat spoke with Dr. Dillon by phone for 13 minutes. Mr. Wheat summarized what had occurred at the School that afternoon with Officer O’Brien and the Teacher. They then discussed the fact that the only issue remaining was about the Book since the GBPD was no longer pursuing the allegations that the Teacher allowed students to sit on her lap, met with students in private and told children to keep information from

their parents. Dr. Dillon and Mr. Wheat agreed during the call that the Book issue, alone, was not appropriate for police intervention. They expressed to each other that the GBPD needed to refrain from further involvement regarding the Book. Dr. Dillon told Mr. Wheat during the call that he was “going to try and get Chief Storti to back off” on the Book issue and follow-up with the District Attorney’s Office, if necessary. They did not know, at that time, that Chief Storti had already made the decision to refer the matter to the District Attorney’s Office.

86. On Monday, December 11, 2023, the DA’s Office informed the GBPD that they may want to see the sign-out sheet for the Book. Chief Storti stated that he was only the messenger between the DA’s Office and the District at that point. Chief Storti agreed to pass this information along to Dr. Dillon, which he did during a telephone call the same day. Dr. Dillon told Chief Storti that he needed to consult with the District’s legal counsel regarding the sign-out sheet. Dr. Dillon also stated that the Book had not been found and that the Teacher was not working that day.
87. On Tuesday, December 12, 2023, Dr. Dillon followed up with Chief Storti to say that the District did not feel comfortable releasing the sign-out sheet because it would identify a student’s name. Dr. Dillon told Chief Storti that “one student had signed the [Book] out of the classroom but the DA’s Office will need a search warrant to get it.” Dr. Dillon promised to secure the sign-out sheet in case the DA’s Office obtained a search warrant. Chief Storti asked that the sign-out sheet be kept in the District’s Administrative Offices in Stockbridge so that if a search warrant was obtained GBPD would not have to execute the search warrant at the School. Dr. Dillon agreed.
88. On Wednesday, December 13, 2023, Chief Storti informed ADA Giarolo that Dr. Dillon would secure the sign-out sheet for the Book but encouraged the DA’s Office to refrain from pursuing a search warrant. Chief Storti also suggested that the DA’s Office talk with Dr. Dillon about allowing the District to address the Book issues internally rather than pursuing it as a criminal matter. ADA Giarolo informed Chief Storti that, depending upon the position of DA Shugrue, a search warrant may be necessary.
89. On the morning of Thursday, December 14, 2023, Dr. Dillon spoke with Julia Sabourin, Director of Community Engagement and Communications at the DA’s Office (“Ms. Sabourin”). Dr. Dillon and Ms. Sabourin previously worked together for the Richmond Consolidated School and knew each other. Dr. Dillon asked Ms. Sabourin to make arrangement for Dr. Dillon to talk with DA Shugrue and she agreed to do so.
90. At 9:44 AM on December 14, 2023, Dr. Dillon wrote an email to Ms. Sabourin following up on their telephone call. A copy of that email is attached as **Exhibit 6**. In that email, Dr. Dillon wrote:

Typically what would happen is this. If someone had a concern about a text or material, they would share that with a teacher or a principal. We might then review or start the reconsideration process.

What happened in this case is that someone went directly to the police and they are trying to determine if the book is obscene or pornographic.

Based on my research it is a graphic novel and memoir of a gender fluid person and while out of context individual cartoons may be provocative, in context they are part of a compelling story that shares context [sic], build empathy, and may be a lifeline for a subset of students making sense of identity.

There is a lot of press on this including both extremes. On the one hand, the book has won awards and is praised while on the other it is a lightning rod. The implications are tremendous and connected to the previous Maplethorpe [sic] case. Many would argue that this graphic novel is simply literature and art and should be protected. At the same time, our existing process for evaluating it may be more relevant than a legal one.

91. Minutes later, at 10:02 AM the same day, Dr. Dillon wrote an email to the School Committee members. A copy of that email is attached as Exhibit 7. In that email Dr. Dillon wrote:

I'm writing to update you on an emerging situation.

On Friday, the GB Police Chief reached out to me to share that they were conducting an investigation related to a complaint about a text at the middle school.

The Chief then sent an officer in plain clothes at the end of the day to try to locate that text. They did not locate it.

The Chief is keeping who made the complaint anonymous.

The Chief has referred it to the DA. I think this is more a district policy matter than a legal one.

The book is not a class text but a supplemental material that students can request to sign out. The book is Gender Queer.

The book is a graphic novel and a memoir of a transgender person. It has won several awards and is the topic of some controversy. It depicts some images that some find offensive. At the same time, many see it as an important story helping build empathy and support for a marginalized group and helping trans or queer students make meaning.

We have policies in place if a parent has concerns about a text but our policies did not anticipate this situation. In the former case, a form is completed and a reconsideration process takes place. In this type of case, many other districts

form a review committee either of school, district and families or of the school committee to read and rate the book.

Other districts have done so with this book and choices have been made to keep it, to limit it some by age or a warning label, or to exclude it. Most in the Northeast have kept it.

I have been in daily dialogue with our attorney.

This is something that many districts and libraries are working through.

Please call me if you have questions and direct others with questions to me.

92. After writing that email to the School Committee, Dr. Dillon connected with DA Shugrue. During that conversation, Dr. Dillon explained the situation in a manner consistent with his email to the School Committee and asked DA Shugrue to allow the District to handle the matter internally rather than treat it as a criminal matter. DA Shugrue agreed.

93. At 11:34 AM, DA Shugrue wrote an email to ADA Giarolo and FADA Shelvey. See **Exhibit 5**. In the email DA Shugrue wrote, as follows:

Andrew I have the opportunity now to research this issue further and have had the opportunity to speak to the Superintendent of Berkshire Hills School District Peter Dillon, the school will be referring the matter to their policies and procedures review board- typically it starts with a teacher, then goes to the principal up the ladder to the Superintendent- this appears to be an illustration book for ages 15 and over and the author is writing a book for younger children. It appears this is not generally provided to 6, 7th or 8th grade but rather for high school. The school will address the book internally pursuant to their policies and procedures standards and they will make the determination if this book is appropriate for the children, or if it's inappropriate or if they must put safeguards in place so it reaches only the appropriate audience and under proper supervision. I have not seen the book, but I am told that these are illustrations for a specific audience for education purposes. It appears the school is aware, and they are taking the proper safeguards. It does not appear to be a criminal matter.

94. One minute later, ADA Giarolo called Officer O'Brien and advised him that DA Shugrue and Dr. Dillon had spoken directly and that the issue would be handled internally by the District and not as a criminal matter.

95. At 11:39 AM, ADA Giarolo wrote an email to Chief Storti and Officer O'Brien confirming that conversation and stating that "[u]pon further review, the DA has stated that this is not a criminal matter. DA has discussed this issue with the Superintendent. They will handle this matter internally and will determine the appropriate audience, if



any, for this book. Thank you for your efforts to try to investigate this matter.” See attached **Exhibit 8**.

96. Later that day, at 4:09 PM, Dr. Dillon wrote an email to the entire District community in which he conveyed much of the same information he previously conveyed to the School Committee. A copy of that email is attached as **Exhibit 9**. Dr. Dillon did not mention in his email to the District community that the DA’s Office and the GBPD were no longer treating the situation as a criminal matter.
97. When the matter gained public attention, Dr. Dillon, Mr. Wheat and Chief Storti issued various forms of apologies but never emphasized in public that their original motivation for authorizing Officer O’Brien’s search at the School was not only because they had limited information about the Book, but primarily because of the allegations in the Complaint about a student sitting on the Teacher’s lap at the School and the allegation that the Teacher and “a few other staff” members were meeting with students in private and telling students not to tell their parents about it.
98. According to all three of them, they never publicly justified the search based on the individual allegations against the Teacher because the allegations turned out to be false and because they did not want to tarnish the Teacher’s reputation with false allegations. In Mr. Wheat’s words, “I was willing to take a hit from staff and the community to protect [the Teacher] from the slanderous and unsubstantiated allegations that had been made against her.”
99. As Mr. Wheat subsequently stated, however, their communication plan “was not exactly a master class in crisis management. We should have gotten out in front of the issues and done a much better job communicating.”
100. Also, because law enforcement refused to disclose that Mr. Yorke was the person who initiated the Complaint, the District was forced to (a) undertake this Investigation to learn his identity, and (b) grant the Teacher paid time off until she knew who made the false allegations and proper safety measures were taken.
101. In an email to Dr. Dillon on Monday, December 18, 2023, Ms. Sabourin explained that Mr. Yorke “met the criteria of law enforcement to remain anonymous.” The Town is investigating the actions of the GBPD in this regard and it is beyond the scope of this Investigation. A full copy of Ms. Sabourin’s email, dated December 18, 2023, is attached as **Exhibit 10**.

**(d) Policy Issues**

102. The District policies set forth above in Sections IV A-C, do not appear to contemplate the precise scenario the District faced when the GBPD – rather than an individual member of the public – was the “visitor” to the School and was the party pursuing issues about the Book and a School employee.

103. Further, it appears that a perception of the GBPD's authority may have caused District officials to be more deferential to the GBPD in order to be seen as cooperative with law enforcement officials they traditionally have relied upon to assist the District with threats to the health and safety of students, faculty and staff.
104. Nevertheless, interpreting each of the above policies strictly and with the benefit of hindsight, the District permitted the GBPD to proceed on December 8, 2023, in contravention of the language in the policies.
105. First, the District had an established policy outlining the process to follow if "an individual or group ask to have any book or other material withdrawn from school use." See Policy KEC – Public Complaints About the Curriculum or Instructional Materials, set forth in Section IV, above.
106. Policy KEC requires that people who object to a book must sign a complaint on a District form documenting their criticism of the book before further action takes place.
107. In this case, neither Mr. Yorke nor the GBPD signed a complaint on a District form documenting their criticism of the Book. Without such documentation, the District should not have allowed the GBPD to proceed with its search of the Teacher's classroom.
108. A mitigating circumstance here is that Mr. Yorke's Complaint to the GBPD included allegations of inappropriate physical contact with a student and other potential improprieties that could have impacted student safety.
109. While those allegations may have justified an inquiry by the GBPD, however, it is clear that before Officer O'Brien began his search of the Teacher's classroom, he was no longer focusing his investigation on the allegations related to physical contact with students and other improprieties because they had no merit. Indeed, the body cam recording makes it clear that Officer O'Brien's only focus during the classroom search was the Book.
110. Once it became clear that Officer O'Brien was only searching for the Book, the search became inconsistent with Policy KEC. The appropriate process under that policy would then have required a signed complaint on a District form documenting any criticism of the Book before proceeding further under the policy.
111. Second, the District had an established policy in place governing public complaints about District employees. See Policy KEB – Public Complaints About District Employees, set forth in Section IV, above.
112. Policy KEB states that before any complaint about a District employee will be investigated, the complainant must submit the complaint in writing. Policy KEB specifically states that "[a]nonymous complaints will be disregarded."

113. Policy KEB also requires that any employee who is the object of a complaint must be informed promptly and be afforded the opportunity to present the facts as the employee sees them.
114. In this case, the District did not follow Policy KEB because (a) the Complaint was not written, (b) from the District's perspective, the Complaint against the Teacher was anonymous because the GBPD would not disclose Mr. Yorke's identity, and (c) the Teacher was not promptly informed of the Complaint against her and did not have an opportunity to present facts before the GBPD began its investigation.
115. Absent an imminent threat to the health and safety of any student, staff or administrator, Policy KEB required the District to disregard the Complaint against the Teacher until the policy requirements had been met. The lack of an imminent threat is evidenced by the fact that the school day was over when Officer O'Brien arrived. The District should have promptly halted the GBPD investigation into the Complaint against the Teacher once it was clear that Policy KEB had not been followed.
116. Third, Policy KI states that "[t]he building Principal has the authority to determine the number, times, and dates of observations by visitors . . . in consultation with employees so as to give adequate notice to the employees of the impending visits." See Policy KI– Visitors To The District, set forth in Section IV, above.
117. The District did not give the Teacher adequate notice of Officer O'Brien's impending visit. Dr. Dillon instructed Mr. Wheat to refrain from giving the Teacher advance notice and told him to follow the lead of the GBPD in that regard. Doing so was inconsistent with Policy KI.
118. Fourth, Policy KLG recognizes that "cooperation with law enforcement agencies is essential for the protection of students, for maintaining a safe environment in the District schools, and for safeguarding all District property." Policy KLG also provides that "[r]elationships between the District and officials of law enforcement agencies in investigative matters concerning pupils will take into consideration the respective roles of the District and law enforcement agencies in assisting and protecting the interests of the community, and ensuring the rights of all concerned." See Policy KLG – Relations With Police Authorities, set forth in Section IV, above.
119. The District endeavored to cooperate with the GBPD – consistent with the overall intent of Policy KLG. The District and the GBPD have built a solid and trusting relationship over the years. The District has relied – and will continue to rely – on the expertise of the GBPD to assist the District whenever unlawful, dangerous and/or threatening conduct occurs at one of the District schools. However, in this case, the District deferred to the GBPD in contravention of Policies KEC, KEB and KI.
120. In this regard, Mr. Wheat stated that: "We let our familiarity and collegial relationship with the GBPD cloud our judgment about the role of police in our schools when it concerns complaints about teachers and books. We should have followed our

policies, pushed back right away and said we would look into the issues and get back to the police. If the District had looked into the issue instead of the police, it would have been resolved right away. The problems we have encountered were not caused by malice or laziness, they were caused by our comfort level with our relationship with the police. We should have insisted upon a warrant from the start.”

121. Fifth, as for the MOU, it expired in June of 2021, and even if it were in effect on December 8, 2023, it does not specifically address the issues that confronted the GBPD and the District when Mr. Yorke made his Complaint. The MOU does contemplate, however, that the District administrators have discretion to “decide on the appropriate course of action” and can make their own “judgment” as to when the police should get involved with an issue. Here, the Complaint was made directly to the GBPD instead of to the District, a situation not contemplated by the MOU.
122. Regarding each of the above-referenced policies, all District employees who were interviewed during the Independent Investigation indicated that they have never been trained on the policies – and some did not even know of their existence.
123. Employees stated that policy training and an updated MOU would have been helpful to them in this situation and they also expressed a need for a policy that applies specifically to classroom libraries that are maintained by individual teachers.
124. Though beyond the scope of the Independent Investigation, employees also lamented that the District was unprepared for a book challenge of the magnitude experienced with the Book and the public outcry that has resulted. Employees expressed that the District should seek professional guidance to prepare for such challenges in the future.

**(e) Discriminatory Motive**

125. Mr. Yorke’s Complaint appears to have been motivated primarily by an effort to retaliate against the District for the disciplinary action and letter of reprimand he received approximately one month before making his Complaint.
126. In addition, based upon numerous comments that Mr. Yorke has made to other School employees since he started working there, it is more likely than not that he was motivated by an intent to discriminate against members of the LGBTQIA+ community and/or those who actively support that community.
127. At no point, however, were the actions of Dr. Dillon, Mr. Wheat, the School Committee or anyone else in a supervisory role in the District motivated by discrimination. To the contrary, they are supportive of the LGBTQIA+ community, supportive of other protected classes and supportive of the Teacher.
128. District decision-makers never sought to “ban” the Book. Rather, that effort was initiated by a single, disgruntled employee who no longer works for the District.

# **EXHIBIT 1**

**Memorandum of Understanding (MOU)**  
**Berkshire Hills Regional School District - Great Barrington Police Department**  
**July 1, 2019 – June 30, 2021**

The Berkshire Hills Regional School District (BHRSD) and the Great Barrington Police Department (GBPD) have entered into this Memorandum of Understanding (MOU) in their mutual effort to keep our schools and community safe and to provide a secure partnership against potential threats.

**Unlawful and Dangerous Behavior Defined**

This MOU addresses unlawful and dangerous behavior by a student or adult which occurs on school property, at a school bus stop, within a school bus, or at a school sponsored activity, and which endangers students or others. Behavior specifically included, but not limited to, being under the influence of and/or in the possession of or distribution of a controlled substance or alcohol; committing an assault or creating a disturbance, possessing a weapon; making threats, including threatening to commit a crime and bomb threats; and committing a crime of violence.

**Reporting**

Any student, staff member or administrator who suspects a student or adult of unlawful or dangerous behavior as described above is to immediately report the same to the Principal, Assistant Principal or designee. In cases of threats of violence, the threat should be reported whether it was made verbally, by the use of gestures, in writing or electronically.

**Initial Response to Reports**

Upon receiving a report that a student is or has been engaged in unlawful or dangerous behavior as described above, the student will be removed from class. Upon receiving a report that an adult is or has been engaged in unlawful or dangerous behavior as described above, the administrator will decide the appropriate course of action dependent on the nature of the report. They may summon, as appropriate, crisis intervention personnel (i.e. nurse, guidance counselor, school psychologist, police or fire personnel) to help assess the situation and develop a plan of action.

**Searches**

If, in the judgment of the school administrator<sup>1</sup>, there is a reasonable suspicion that the student is under the influence of or in possession of a controlled substance or alcohol, or possesses a weapon or other object that is either unlawful to possess or presents a danger to the student or others, the administrator may conduct a search or contact the police, as appropriate. Searches will be done in the presence of a third party, if possible, and may include searches of the student, their possession, their locker and their car. If an adult is involved, the administrator may contact the police for assistance and/or request the employee leave school while an investigation is being conducted. In no case will someone, student or adult, who is suspected to be under the influence be allowed to drive themselves off campus.

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<sup>1</sup> *In the case where a teacher, guidance counselor, school psychologist or other educational professional has reasonable suspicion that a student is in possession of a weapon or other object which could harm others, and where the teacher, guidance counselor, school psychologist or other educational professional believes that delay in conducting the search could endanger student(s) or adult(s), the teacher, guidance counselor, school psychologist or other educational professional may conduct a search.*

### **Special Responses to Threats**

For the purposes of this memorandum, a threat shall mean the expression of, or an intention to inflict evil, injury or damage to another and includes but is not limited to the threatened use of physical force or a deadly weapon against another, bomb threats, or any other threat intended to cause fear, anxiety or harm to any student, staff member or administrator. Dependent on the nature of the threat the school administration may immediately suspend the student, isolate the student, convene the crisis team, contact the police or fire departments, or take other appropriate action. Procedures outlined in the Emergency Handbook regarding protocols and communication will be followed.

### **Bomb Threats**

If a bomb threat is received by phone, electronically or discovered in writing the building principal or designee will be notified immediately. The principal or designee will then notify the police chief, fire chief and the superintendent of the threat. This team will work collaboratively to determine the most appropriate response to the threat. The team will look at the level of detail and credibility within the threat in determining the best response by the district. Responses may include, but are not limited to, temporary evacuation of the building, evacuation of the campus, shelter in place while certain areas are searched, or resumption normal daily operations.

Procedures regarding notification of parents, chain of command, media releases, etc. contained in the district's emergency plan will be followed.

### **Police Notification**

When, in the judgment of the administrator, the police should be involved, the police shall be immediately summoned, such instance may include, but is not limited to following circumstances:

- Where the administration determines an eminent danger exists to any student, staff or administrator
- Where the student is found in possession of and/or distributing a controlled substance, alcohol or a weapon that it is either unlawful to possess, is in violation of school policy, or presents a danger to the student or others
- Where an adult is found to be in possession of a weapon, or appears to be distributing a controlled substance on school grounds, at a school event or near a school bus stop
- Where an assault has occurred and the administration determines that the seriousness warrants a formal report to and/or investigation by the police is appropriate
- Where a threat to commit a crime has occurred and the administration determines the seriousness of the threat and/or history of the individual may justify an investigation by the police
- Where the administration has determined that a disturbance or disorderly conduct has occurred at the school

### **Police Notification**

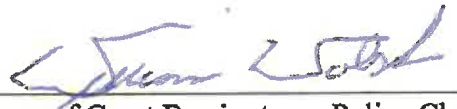
Upon responding to the school administration's request to any of the above circumstances, the police assess and/or conduct an investigation to determine if sufficient evidence of a crime exists to file criminal charges and, if so, whether to summons or arrest the suspect to appear in court to answer the criminal charges.

Interviews of students considered to be involved, whether as perpetrators, witnesses or victims, will ordinarily be conducted at the police department. Should extenuating circumstances exist and officers need to interview at school, prior notification of parents and/or the presence of parents, as appropriate, will occur.

**Police Presence at School Events**

When the school district hires a police officer to be at an event the officer will patrol the inside and outside of the building, keep the fire lanes clear, be a presence at the event and assist the administration should a situation arise where their help is needed, i.e. disorderly conduct, someone being under the influence of a controlled substance or alcohol, etc.

  
\_\_\_\_\_  
BHRSD Superintendent of Schools

  
\_\_\_\_\_  
Town of Great Barrington – Police Chief

September 26, 2019  
\_\_\_\_\_  
Date

10-2-19  
\_\_\_\_\_  
Date



## **EXHIBIT 2**

1. On December 8, 2023 an individual wishing to remain anonymous for fear of retaliation came into the police station. The individual informed me they were concerned about images in a book they saw in a classroom at the W.E.B Dubois Middle School. They stated they saw the book in the 8<sup>th</sup> grade English classroom of a teacher with the name [REDACTED]. The individual explained on another occasion they also observed a student sitting on the teachers, [REDACTED], lap. The individual was concerned about this conduct as well as the teacher and a few other staff meeting with students in private, and discussing subjects related to LGBTQ material and telling them not to tell their parents about it.

2. The individual then presented 3 photographs of a book that was located on a desk in [REDACTED] class room in the last 2 weeks. The photographs were of the book titled "Gender Queer" and then of one interior page of illustrations. The captions with the images discuss a strap on dildo and then shows one individual with their pants undone wearing what appears to be a strap on dildo and the other individual kneeling down in front and performing oral sex by placing the dildo into their mouth. Without additional information at that time, the drawn characters appeared to be young individuals that may be meant to portray children under the age of 18, which may be a violation of Massachusetts General Law 272/29 Dissemination of obscene matter.



3. Based on the three photographs and the reported conduct of students sitting on a teachers lap, I immediately contacted Chief Storti of the report and he made contact with Berkshire Hills Regional School District Superintendent Peter Dillion. Based on the conversation it was arranged for me to meet with Principal Miles Wheat of W.E.B Dubois Middle School and attempt to

follow up on the complaint. It was arranged that I would go in plainclothes and meet with him after school let out for the day.

4. Upon arriving I rang the intercom and informed the person who answered I was there to meet with Principal Miles Wheat at which point I was buzzed in and the receptionist brought me to Principal Wheat's office. Once in the office I spoke with Principal Miles Wheat about the report. Principal Wheat informed me that [REDACTED] (identified as [REDACTED]) is an 8<sup>th</sup> grade English teacher who also runs a LGBTQ club/meeting group that typically meets during the day. When asked about any concerns in her contact with students based on the allegation that a student was sitting on [REDACTED] lap. He stated he had no concerns and that during the meetings the doors are kept open. Additionally he was aware the group on occasion may suggest not talking to parents or others about what is discussed as if a student opens up they don't want other kids in the group discussing that with others outside. Up to this point he has no complaints or concerns of inappropriate behavior by [REDACTED] [REDACTED] other teacher involved in that club or other book clubs in the school.

5. Principal Wheat then brought me to [REDACTED] classroom on the second floor south side of the building. Principal Wheat asked if he could speak with [REDACTED] prior to bringing me in and upon going into the room he emerged quickly and stated she was not currently in the room. Principal Wheat left to locate [REDACTED] while I waited in the hallway of the second floor. Principal Wheat returned after a couple of minutes with [REDACTED] who he had a brief discussion with in private. Principal Wheat then invited me into the classroom and upon entering the room, I activated my body worn camera and advised both Principal Wheat and [REDACTED] that I was turning on my body worn camera.

6. I stated to [REDACTED] that maybe it would help her to know which book was in question and showed her a picture. Upon showing [REDACTED] the images of the book I was looking for "Gender Queer" [REDACTED] acknowledged the book and that it should be on a book shelf with books of similar themes that was directly in front of the door however she did not see it there currently. She stated that only children with permission may take books from there. Principal Wheat then knelt down and browsed the bookshelf.

7. In looking [REDACTED] stated, she did not see the book "Gender Queer" on the shelf. [REDACTED] acknowledged that she had read the book herself when it first came out however she didn't recall the content specifically. While speaking with [REDACTED] I showed her the image in question and explained it is not the subject matter of the book in general but the image could be content that can't be given to children under 18 which was part of our concern. [REDACTED] stated the book was more about coming of age

and we were welcome to remove it if we see it but she didn't see it. She stated she does not keep track of it, it is meant to stay there but another teacher could have it.

8. I asked what the book looked like in size, shape, and compared to ones on the shelf. [REDACTED] bent down and grabbed a book and stated it was probably smaller than the book she grabbed. [REDACTED] stated again she doesn't see it and its not something that is out for everyone and the shelf needs special approval. I asked if any other books would have similar images and [REDACTED] stated not that she was aware of and stated I was welcome to flip through them to which I advised her I would not be.

9. After not seeing the book on the shelf, I asked [REDACTED] if it could be any place else in the room and she stated I was welcome to look around but she had not seen it. I informed her again it did not appear it was on the shelf from where I was standing and that if it did turn up she should turn it over to Principal Wheat which again I stated it was the images that were in the book that were of concern. I asked if there was any specific teacher that may have it and [REDACTED] stated she could ask around. I informed her that just because a teacher has the book does not mean they are in any kind of trouble either.

10. I walked the perimeter of the room upon reaching [REDACTED] desk area I stated to [REDACTED] that it appeared her desk was where the book was in the photograph. [REDACTED] stated I was welcome to look but she didn't recall seeing it there. [REDACTED] walked over to where I was and she stated in the photograph it was the desk in the center in the classroom surrounded in a circle by student's desks. [REDACTED] stated it's definitely not over there as she had just cleaned it off but I was welcome to look. I checked the center desk and observed the book was not there. I again stated that it appeared the book was there at one time and if it turns up to turn it over to Principal Wheat and suggested maybe to look through the other books to make sure of the content in them in case there was other images that could be construed as dissemination of obscene matter. It was agreed we were not going to check any place else in the school and that Principal Wheat would follow up with us on the following Monday.

11. [REDACTED] stated she felt like she hasn't seen it in a long time, and I advised her supposedly the photograph was from a week or two prior. [REDACTED] stated she didn't think a student had it and checked a student book sign out sheet and stated no student has it signed out currently. [REDACTED] stated she would assume it's not with a kid. It was suggested to ask the other teachers where the book was at and at least take it out of circulation for now till we can follow up on it. Principal Wheat and I returned to his office briefly and I provided my contact information to follow up with on Monday December 11, 2023.

12. Upon returning to the police station on December 8, 2023 I spoke further with Chief Storti. Chief Storti requested I contact the District Attorneys office and apprise them of the complaint and for guidance. I subsequently placed a call to the Berkshire District Attorneys Office and made contact ADA Andrew Giarolo. I provided ADA Andrew Giarolo with the information we had at that time.

13. On December 13, 2023 at approximately 1201 Hrs, Chief Storti and I again spoke with ADA Giarolo by phone and updated him on the complaint. Based on the conversation I was advised that I may need to prepare to write a search warrant to obtain to obtain any additional documentation from the school.

14. On December 14, 2023 at 1135 Hrs I received a phone call from ADA Giarolo. ADA Giarolo advised me that DA Shugrue and Superintendent Peter Dillion had talked directly and that it was no longer a criminal matter and the school would handle internally. I requested that ADA Giarolo send an email stating this to Chief Storti and myself. At 1140 Hrs. I received an email stating the following;

Chief and Joe,

Upon further review, the DA has stated that this is not a criminal matter. DA has discussed this issue with the Superintendent. They will handle this matter internally and will determine the appropriate audience, if any, for this book. Thank you for your efforts to try to investigate this matter.

Andrew Giarolo

Assistant District Attorney

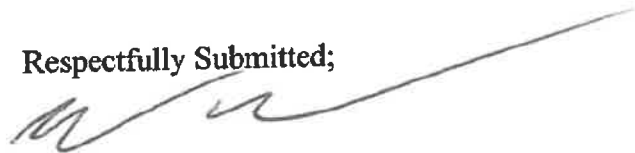
Berkshire District Attorney's Office

7 North Street, First Floor

Pittsfield, MA 01201

15. The above report reflects my involvement in this complaint. Refer to Chief Storti's report for final disposition.

Respectfully Submitted;



Inv. Joe O'Brien

or Date: 12/08/2023 - Friday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>	<u>Priority</u>	<u>Duplicate</u>
3-13206	1345	Initiated - INVESTIGATION	Services Rendered 3		
Call Taker:		JAO - O'BRIEN, JOSEPH			
Primary Id:		JAO - O'BRIEN, JOSEPH			
Call Closed By:		SJR - RIVA, SAMUEL 12/08/2023 1557			
Call Modified By:		SJR - RIVA, SAMUEL			
Location:		[GRE] GB			
Jurisdiction:		Great Barrington			
Initiated By:		JAO - O'BRIEN, JOSEPH			
ID:		JAO - O'BRIEN, JOSEPH			
			Arvd-13:45:00	Clrd-15:57:48	
Cleared By:		SJR - RIVA, SAMUEL			
Narrative:		12/08/2023 1345 O'BRIEN, JOSEPH			
		PARTY IN STATION TO REPORT SUSPICIOUS ACTIVITY. 654 ADVISED AS WELL.			

Refer To Incident: 23-300-OF

## **EXHIBIT 3**



Great Barrington Police Department  
Incident Report

Incident #: 23-300-OF  
Call #: 23-13206

Date/Time Reported: 12/08/2023 1345  
Report Date/Time: 12/21/2023 1040  
Status: No Crime Involved

Involves: Juveniles  
Reporting Officer: Chief PAUL STORTI

Signature: \_\_\_\_\_



#	INVOLVED	SEX RACE	AGE	SSN	PHONE
1	[REDACTED]	[REDACTED]	[REDACTED]	NOT AVAIL	

Military Active Duty: N  
BODY: NOT AVAIL.  
LICENSE NUMBER: NOT AVAIL.  
COMPLEXION: NOT AVAIL.  
PLACE OF BIRTH: NOT AVAIL.  
ETHNICITY: [REDACTED]

#	EVENTS (S)
	LOCATION TYPE: School-Elementary/Secondary      Zone: GREAT BARRINGTON GB 313 MONUMENT VALLEY RD GREAT BARRINGTON MA 01230
1	OBSCENE MATTER AT WEB MIDDLE SCHOOL

#	PERSON (S)	PERSON TYPE	SEX RACE	AGE	SSN	PHONE
1	CONFIDENTIAL					



**Entered: 12/21/2023 @ 1046**  
**Modified: 12/26/2023 @ 1531**

**Entry ID: PES**  
**Modified ID: PES**

On December 8, 2023, a person presented themselves to file a formal complaint involving illustrations they have observed in a teachers classroom within the WEB Dubois Middle School that they felt was inappropriate. The WEB Dubois Middle School serves the fifth, sixth, and Seventh grades at Berkshire Hills Regional School District. The reporting party explained that the teacher who he identified as an 8th grade teacher named [REDACTED] along with a few others are meeting with students during school, but outside of classroom time. They observed a book on a table within the teacher's classroom that depicted an illustrations of sexual content. This book with the illustration was observed on a desk within the teacher's classroom. The person also reported to overhearing the same teacher telling students to "not tell their parents" and that they observed a student sitting on the lap of the same teacher. The person requested to remain confidential, as they feared for any retaliation if it was discovered that they provided this information.

2. The individual then presented photographs of a book that was located on a desk in the teacher's classroom in the last two weeks. The photographs provided were two of the book cover titled Gender Queer and then of one interior page of illustrations. The captions with the image discuses a strap on penis adult toy and then shows one individual with their pants undone wearing what appears to be a strap on adult toy and the other individual kneeling down in front and performing oral sex by placing the adult toy into their mouth.
3. On December 8, 2023, Investigator O'Brien who took the complaint informed me and I responded to the station as I was off duty. Once at the station I reviewed the images and information that the individual provided. I immediately notified Superintendent Peter Dillon of the complaint. I spoke with Superintendent Dillon and he advised me that he was not aware or familiar with the book containing these graphic illustrations. Superintendent Dillon stated to me that he would contact Miles Wheat the principal of the middle school and see if he knew anything about this and call me back. He also stated he would put Steve Bannon, Schoolboard Chair, "in the loop."
4. Superintendent Dillon contacted me back approximately 15-20 minutes later. I was told that Principal Wheat did not know anything about the book that contained the illustrations that were reported to us. I advised Superintendent Dillon that because I had a complaint I was obligated to do a follow-up on it. Superintendent Dillon said he did not have an issue with us coming to the school to see if the book was present in the classroom and follow-up on the complaint.
5. Superintendent Dillon and I discussed the sensitivity of the situation and worked out a plan to meet to determine if the complaint was credible as dictated within our polices. He arranged for Principal Wheat to meet with a plain clothed officer at the school after classroom hours. I instructed Investigator O'Brien to follow-up on this complaint and see if he could determine if the complaint was credible. I advised him to change out of his uniform and use an unmarked police vehicle to go to the school.
6. Investigator O'Brien responded to the school to complete a follow-up investigation on the complaint. See Investigator O'Brien's report and body cam.
7. After Investigator O'Brien returned from his follow-up, we contacted the District Attorney's Office to see if they could offer some guidance on this matter. We were advised that we should try to locate the book to evaluate the illustrations to see if any potential criminal violations were warranted. We had already completed our inquiry to the complaint and had left the school, prior to receiving the communication from

**Entered: 12/21/2023 @ 1046**  
**Modified: 12/26/2023 @ 1531****Entry ID: PES**  
**Modified ID: PES**

the District Attorney's Office. Superintendent Dillon and I decided to be in contact Monday.

8. On Monday December 11, 2023, I spoke with Superintendent Dillon. He advised me that he does not have the book and the teacher is not in school today. He did some research on the book and illustrations and learned it is a highly controversial book throughout the country. I advised him of the information I was receiving from the District Attorney's Office regarding any documents that would ascertain if any child had ever viewed the material in question. We agreed to be in contact again on Tuesday.
9. Tuesday December 12, 2023 Superintendent Dillon and I spoke. His legal council advised him not to share any information regarding a child without obtaining a search warrant. He stated that he may not be able to locate the book, but would secure any pertinent information in his off campus office. Superintendent Dillon and I discussed the policies and procedures they have to report a situation like this within the school and that the policy didn't cover this situation, when an incident is reported to the police and not the school.
10. Wednesday December 13, 2023. Investigator O'Brien and I spoke with Assistant District Attorney Andrew Giarolo. We advised the District Attorney's Office of the legal advise the school district was given. We were told we might have to plan for having to write a search warrant to obtain any information regarding this matter. Assistant District Attorney Andrew Giarolo was going to confirm this and let us know.
11. Superintendent Dillon and I continued the conversation. He was advised of my conversation with the District Attorney's Office. Superintendent Dillon stated that at this point he didn't think he would be able to locate the book. We discussed what the next steps be if a search warrant was needed in he future. Superintendent Dillon and I both agreed that if it came to this, we should do it at his administrative office in Stockbridge. He stated he would secure any items that the District Attorney may want if an criminal investigation was warranted. I advised him that I have a meeting on another matter (unrelated to this) Thursday morning with the District Attorney and I would share our conversation and information about the school policies with him. We agreed to talk after my meeting on Thursday.
12. December 14, 2023. I discovered my meeting with was not Thursday, it was scheduled for Friday. I immediately contacted Superintendent Dillon to advise him. Superintendent Dillon asked me if he should wait to call District Attorney until after my conversation with the District Attorney on Friday. I encouraged him to call the District Attorney's office immediately and start a conversation to explain the policies and procedures that the school has in place. Superintendent Dillon also discussed that the media may contact us and he asked if I had spoken with anyone about this matter. I advised him that we had not. Within minutes of completing the call, I received a call from a media outlet asking about the matter. I learned from this conversation that the involved teacher had posted something on their Instagram account about this matter. I then contacted Superintendent Dillon and advised him what I had learned. He stated that he too was just given the information.
13. A short time later, Superintendent Dillon called me back, advised that he has reached out to the District Attorney's Office, and has me meeting scheduled with District Attorney Shugrue today. At 11:35 we received information from District Attorney's Office to close the inquiry as they determined that there was not a

Great Barrington Police Department

NARRATIVE FOR CHIEF PAUL E STORTI

Ref: 23-300-OF

Page: 3  
12/27/2023

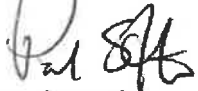
Entered: 12/21/2023 @ 1046  
Modified: 12/26/2023 @ 1531

Entry ID: PES  
Modified ID: PES

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crime committed and that the school district will manage the situation. I received an email confirmation from the District Attorney Office advising this was a school matter and that they should handle it internally.

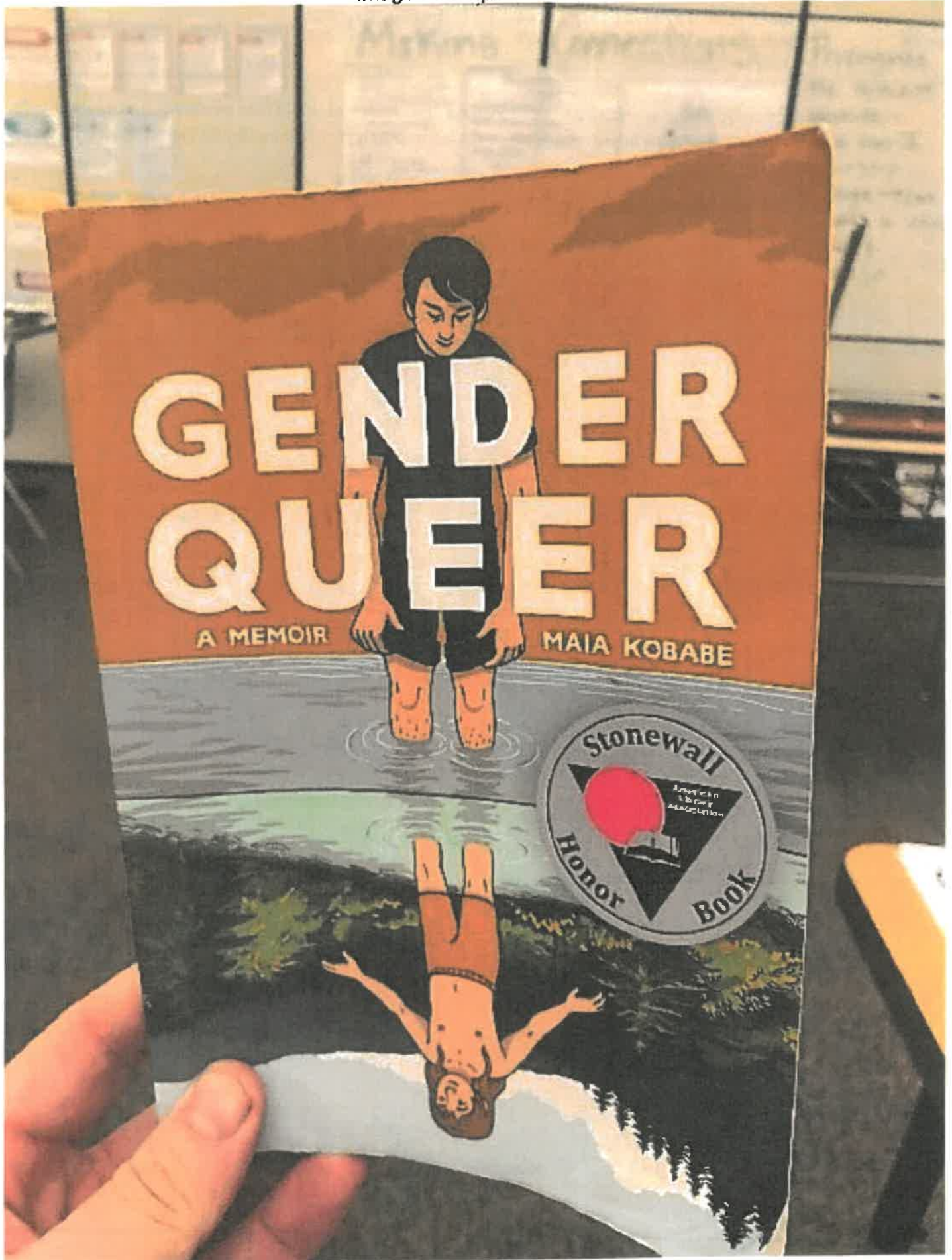
Respectfully Submitted,



Paul Storti

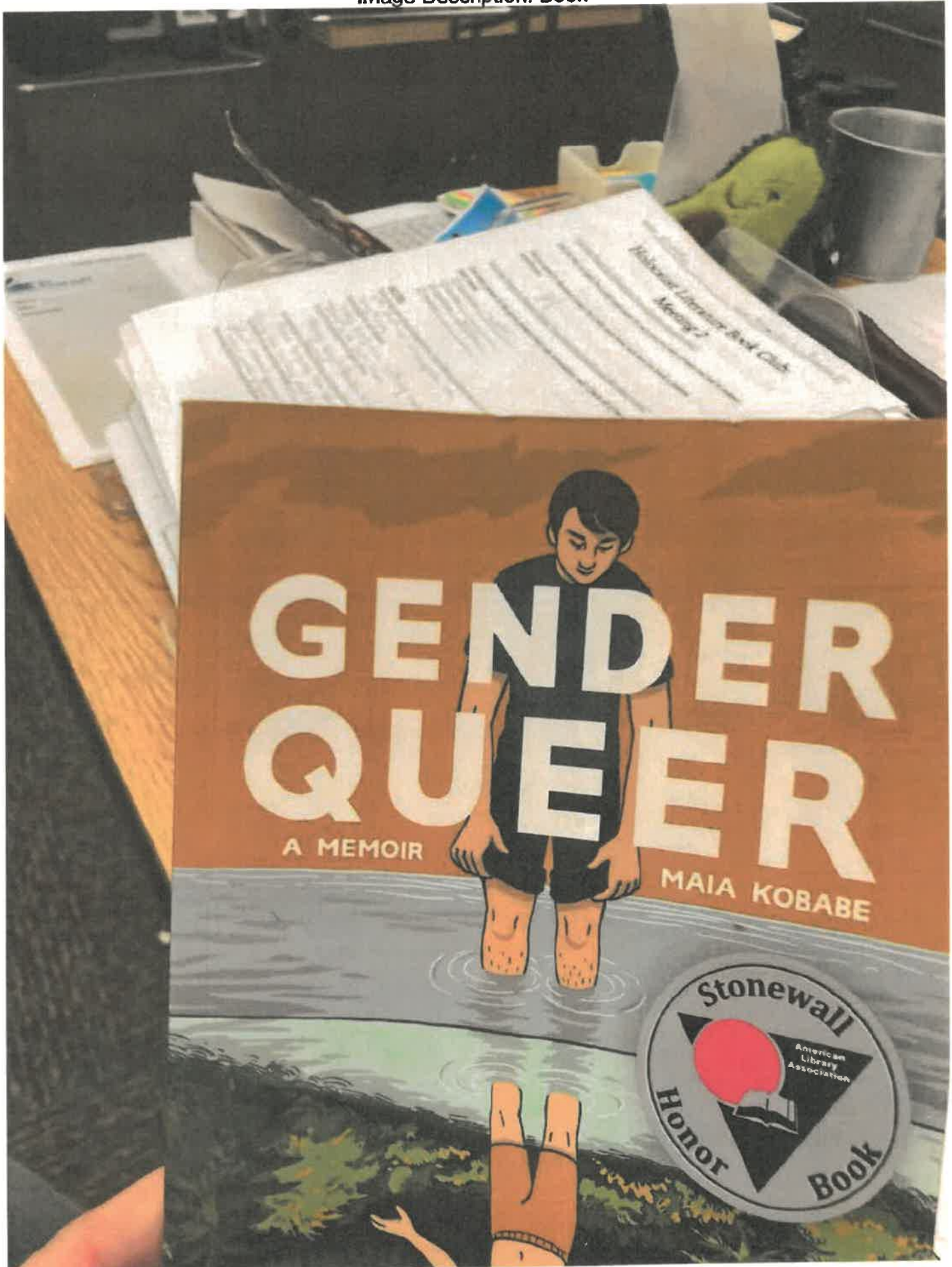
Chief of Police

Great Barrington Police Department  
Image Associated With Case Number 23-300-OF  
Image Description: Book



Great Barrington Police Department  
Image Associated With Case Number 23-300-OF  
Image Description: Book





## **EXHIBIT 4**

[00:00:33] **Mr. Wheat:** [Teacher] this is Joe O'Brien.

[00:00:35] **Teacher:** Yeah.

[00:00:35] **Officer O'Brien:** Maybe it'll help you to pick what book.

[00:00:39] **Teacher:** Yeah, absolutely. So that's one of the ones that would be on one of these shelves. Um, I don't actually currently see it here, so. So it may or may not be out.

[00:00:50] **Officer O'Brien:** Have you looked through the book yourself?

[00:00:52] **Teacher:** Uh, I did read it back when it first came out. Yeah. But I don't really recall. Okay.

[00:01:00] **Officer O'Brien:** This is the issue. Um, it's not the. It's not the general idea of what the book's about. It's that you can't present that kind of material to people under 18. Um, so that's our concern, um, that's why we're here.

[00:01:13] **Teacher:** Yeah, it's a memoir about coming of age. I mean, you're welcome to remove it if you see it, but.

[00:01:19] **Officer O'Brien:** So. Yeah, I.

[00:01:20] **Teacher:** Don't see it.

[00:01:20] **Officer O'Brien:** So could it be on a -

[00:01:22] **Teacher:** It's possible that a teacher has it. A lot of teachers and other people have borrowed it as well. Um, I don't keep track of it.

[00:01:33] **Officer O'Brien:** Could a student have it at this time, or is it more like it has to stay in the classroom?

[00:01:37] **Teacher:** It is meant to stay here, but it's - I can ask my colleagues if one of them has it. I know that.



[00:01:45] **Officer O'Brien:** Well, So it's a fairly good-sized book. So -

[00:01:47] **Teacher:** Uh. It's pretty thin.

[00:01:49] **Officer O'Brien:** Yeah. I mean thin wise-

[00:01:50] **Teacher:** No, it would probably be, uh, actually smaller than this one. It's a little smaller. Okay. Yeah, I miss that. So I don't see it. So it is not here.

[00:01:59] **Officer O'Brien:** Okay.

[00:02:00] **Teacher:** Um, but it's not something that is out for everybody. So it needs - this is special approval only, so.

[00:02:07] **Officer O'Brien:** I mean, as far as any of these other books are there similar images that could be in any of them.

[00:02:15] **Teacher:** Not that I know of. You're welcome to flip through them.

[00:02:17] **Officer O'Brien:** I am not looking to flip through every single book here.

[00:02:21] **Teacher:** Yeah. Um, not that I know of. No.

[00:02:24] **Officer O'Brien:** Okay, but any place else in the room that it might be left floating around?

[00:02:28] **Teacher:** You're welcome to look around. I have not seen it. So.

[00:02:32] **Officer O'Brien:** It seems like you kind of keep that material over there.

[00:02:36] **Teacher:** I do keep the material separate. Um. On purpose.

[00:02:43] **Officer O'Brien:** It's a little thicker than that from what I saw in the picture. We did our due diligence to make sure it's not here. However, when it does return, um, I think it needs to

be turned over to Miles and we'll go from there at that point. Um, obviously it's like I said, it's not the general material itself, it's the images that are in it, um, that constitutes material that you can't disseminate to children. ::Rustling noises:: Would you know of any specific teacher that would borrow that book that could have it right now? It's.

[00:03:43] **Teacher:** I can ask around. Uh.

[00:03:48] **Officer O'Brien:** And again, just because a teacher specifically has it doesn't mean they're in any kind of trouble. So I don't want you to think that, like, if you know, you think you know who the teacher is, I don't want you to.

[00:03:57] **Teacher:** Yeah. No. There's books. There's books on here that are meant for, like, you know, we've got teacher guides on how to use them. Okay, so I don't monitor whether it's - what teachers do. Okay.

[00:04:27] **Officer O'Brien:** So it looks like at this point anyways - it was around your desk area - was it around your desk at all?

[00:04:33] **Teacher:** You're welcome to look, but I don't think so. I haven't seen it.

[00:04:38] **Officer O'Brien:** The only reason I'm referencing that is I just see what looks like - maybe this tin cup or papers and what looks like a desk.

[00:04:48] **Teacher:** Let me see. Uh. Yeah. That uh, that would that's the center table. But it's definitely not over there because I just cleaned it off. But again, you're welcome to look.

[00:04:57] **Teacher:** Yeah. Feel free to look.

[00:04:58] **Officer O'Brien:** So I just got to do my due diligence. [garbled]

[00:05:26] **Officer O'Brien:** Don't specifically see it anywhere right here. I mean, obviously somewhere in the teaching environment. Um, not necessarily right now. Um, that would be my suggestion that it's turned over to Miles, and we proceed from there on that. I would make it a point yourself as a teacher to go through the books that are there to make sure there's no other images that would be deeming stuff like that. Um, you know, for, for visual content.

[00:05:53] **Teacher:** Yeah, mostly they're chapter books.

[00:05:55] **Officer O'Brien:** Yeah. But I would just like I said, I mean, I know you, you know, you might not know everything that's in every one of those books.

[00:06:01] **Teacher:** No, I don't.

[00:06:02] **Officer O'Brien:** You know, but it'd be worth going through them to make sure that there's nothing that could be construed as.

[00:06:09] **School Announcement Speaker:** [Referencing a student's name]

[00:06:17] **Officer O'Brien:** Yeah. I mean, if you're okay with that, Miles. I mean, yeah, I mean, we could sit here and search every room and ask every teacher I'd rather not go that route and, you know and disrupt everything over one book that we're looking for to make sure it's not there anymore.

[00:06:32] **Mr. Wheat:** There's people still here. So when we're done, I'll just. I'll ask around and someone will likely have it, and - when we find it -

[00:06:39] **Officer O'Brien:** Yeah. And just let us know and we can touch base on Monday after the weekend. At this point, I'd say.

[00:06:44] **Mr. Wheat:** That's fine.

[00:06:45] **Officer O'Brien:** Um, you know, especially if a student has it, make sure you just get it back.

[00:06:47] **Teacher:** I really I'm like really thinking hard. I really have not seen it in a long time. So I really don't know.

[00:06:55] **Officer O'Brien:** Okay, from the sounds of it, that was within a week to two time period that that was on that desk.

[00:07:03] **Teacher:** They didn't sign it out though. I assume it's not with a kid, but.

[00:07:20] **Teacher:** No, nobody has it signed out, so I would assume it's not with a kid.

[00:07:26] **Officer O'Brien:** Okay. I think that's the route to go. Just to, you know, try to ask the teachers where that book's at. Um, at least take it out of circulation for now and we can follow up from there. Um, on the matter.

[00:07:42] **Mr. Wheat:** Okay.

[00:07:43] **Officer O'Brien:** And then just my recommendation go through the rest of the books to make sure there's nothing else there depicting, you know, stuff along that lines.

[00:07:50] **Mr. Wheat:** Alright. Well, why don't we - Why don't you and I go downstairs? Um, and I'll - I'll talk to folks about the book and then we may be able to find it this afternoon once I start talking to people.

[00:08:02] **Officer O'Brien:** Okay. Um, [garbled]

## **EXHIBIT 5**

**From:** Giarolo, Andrew (BER)  
**To:** Shugrue, Timothy (BER); Shelvey, Marianne (BER)  
**Subject:** Re: Great Barrington School Issue - SENSITIVE  
**Date:** Thursday, December 14, 2023 11:35:21 AM

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Received and understood. I will notify GBPD

Get [Outlook for iOS](#)

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**From:** Shugrue, Timothy (BER) [REDACTED]  
**Sent:** Thursday, December 14, 2023 11:34:20 AM  
**To:** Giarolo, Andrew (BER) [REDACTED]; Shelvey, Marianne (BER)  
[REDACTED]  
**Subject:** RE: Great Barrington School Issue - SENSITIVE

Andrew I have the opportunity now to research this issue further and have had the opportunity to speak to the Superintendent of Berkshire Hills School District Peter Dillon, the school will be referring the matter to their policies and procedures review board- typically it starts with a teacher, then goes to the principal up the ladder to the Superintendent. this appears to be an illustration book for ages 15 and over and the author is writing a book for younger children. It appears this is not generally provided to 6, 7<sup>th</sup> or 8<sup>th</sup> grade but rather for high school. The school will address the book internally pursuant to their policies and procedures standards and they will make the determination if this book is appropriate for the children, or if it's inappropriate or if they must put safeguards in place so it reaches only the appropriate audience and under proper supervision. I have not seen the book, but I am told that these are illustrations for a specific audience for education purposes. It appears the school is aware, and they are taking the proper safeguards. It does not appear to be a criminal matter.

**From:** Giarolo, Andrew (BER) [REDACTED]  
**Sent:** Friday, December 8, 2023 4:24 PM  
**To:** Shugrue, Timothy (BER) [REDACTED]; Shelvey, Marianne (BER)  
[REDACTED]  
**Subject:** RE: Great Barrington School Issue - SENSITIVE

Relayed to Joe O'Brien. He and the Chief will get on it.

**From:** Shugrue, Timothy (BER) [REDACTED]  
**Sent:** Friday, December 08, 2023 4:14 PM  
**To:** Giarolo, Andrew (BER) [REDACTED]; Shelvey, Marianne (BER)  
[REDACTED]  
**Subject:** Re: Great Barrington School Issue - SENSITIVE

This book needs to be out if that school forever right now- I don't care if it's artistic- if it depicts graphic sexual illustrations it has no place for minors to view and observe- do we allow heterosexual illustrated sexual books in the library? I do not think so

Get Outlook for iOS

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**From:** Giarolo, Andrew (BER) [REDACTED]  
**Sent:** Friday, December 8, 2023 4:10:37 PM  
**To:** Shugrue, Timothy (BER) [REDACTED]; Shelvey, Marianne (BER)  
[REDACTED]  
**Subject:** Great Barrington School Issue - SENSITIVE

Good afternoon,

I just returned a call from Joe O'Brien. Apparently, the LGBTQ Club at Monument had a book in its lending library that is very controversial. The book is called "Gender Queer" by Maia Kobabe. A parent made GBPD aware of this book being available to students. The book is a graphic novel (comic book) memoir, but includes a number of sexually explicit cartoons and historical images including one cartoon that arguably is two boys engaging in oral sex. Joe went to the school and the book was no longer in the library, but thought it may have been checked out by another teacher.

The 8<sup>th</sup> grade teacher who manages the library and leads the club was very cooperative and admitted that the book was there and available to students. The principal and superintendent were present as well and cooperative. They were going to continue speaking quietly with other teachers about the book. Joe will go back and obtain copies of the signout slip just in case we decide to move forward with any kind of prosecution to show that a minor actually viewed the images. Here is a link to the Wikipedia page: [https://en.wikipedia.org/wiki/Gender\\_Queer](https://en.wikipedia.org/wiki/Gender_Queer). Legally, we would have two major issues, namely does this book qualify as "obscene" and did any minor actually view these images. As to the former, there may be some artistic, literary, etc merit to these images in context and they are not likely intended to appeal to the prurient interest. As you will see, the book has stirred up controversy nationwide and some jurisdiction have banned the book. Joe was looking for guidance on moving forward. I told him we should await instructions from the DA due to the nature of this allegation. He is fine with that and will continue his investigation.

APG

## **EXHIBIT 6**



**follow up**

Peter Dillon <peter.dillon@bhrrsd.org>  
To: Julia.Sabourin@mass.gov

Thu, Dec 14, 2023 at 9:44 AM

Julia,

Thanks for talking with me.

I would appreciate speaking with the DA.

My basic argument is that curriculum/supplemental materials choices fall within the jurisdiction of the school committee which delegates that task to teachers, principals and superintendents.

That is outlined in our searchable policy database.

Our policies are detailed in this searchable website.

<https://z2policy.ctspublish.com/masc/browse/berkshirehillisset/welcome/root>

Some relevant ones include:

<https://z2policy.ctspublish.com/masc/browse/berkshirehillisset/berkshirehills/GA>

[https://z2policy.ctspublish.com/masc/browse/berkshirehillisset/berkshirehills/J/z2Code\\_IJ](https://z2policy.ctspublish.com/masc/browse/berkshirehillisset/berkshirehills/J/z2Code_IJ)

<https://z2policy.ctspublish.com/masc/browse/berkshirehillisset/berkshirehills/JJ-R>

In simple terms, faculty select curriculum and supplemental texts, supervised by principals, me as the superintendent and then finally the school committee. Often those choices are informed by national groups — teachers of particular subjects, library associations, etc.

Some books may be more appropriate at certain levels or ages.

Typically what would happen is this. If someone had a concern about a text or material, they would share that with a teacher or principal. We might then review or start the reconsideration process.

What happened in this case is that someone went directly to the police and they are trying to determine if the book is obscene or pornographic.

Based on my research it is a graphic novel and memoir of a gender fluid person and while out of context individual cartoons may be provocative, in context they are part of a compelling story that shares context, build empathy, and may be a lifeline for a subset of students making sense of identity.

There is a lot of press on this including both extremes. On the one hand the book has won awards and is praised while on the other it is a lightning rod. The implications are tremendous and connected to the previous Maplethorpe case. Many would argue that this graphic novel is simply literature and art and should be

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protected. At the same time, our existing process for evaluating it may be more relevant than a legal one.

Here are a few articles that may be helpful:

<https://apnews.com/article/most-challenged-books-2022-list-c39af4320afb16525cb0fd911c9ffed4>

<https://bookriot.com/gender-queer-in-maine/>

<https://thescopeboston.org/8878/news-and-features/book-bans-massachusetts/>

<https://www.bostonglobe.com/2023/12/04/metro/civil-liberties-lgbtq-advocates-urge-schools-resist-book-bans/>

Again, I look forward to discussing.

Peter

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Peter Dillon, Ed.D.  
Superintendent of Schools  
Berkshire Hills Regional School District  
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<http://www.bhrrsd.org>

[peter.dillon@bhrrsd.org](mailto:peter.dillon@bhrrsd.org)

## **EXHIBIT 7**

Peter Dillon < peter.dillon@bhred.org >

## potentially challenging situation

Peter Dillon < peter.dillon@bhred.org >

To: Anne Hutchinson < ahutchinson@bhred.org >, Diane Singer < dsingermd@gmail.com >, Bonnie Bonn-Buffoni < bbonn.buffoni.sc@gmail.com >, Stephen Bannon < scbannon@gmail.com >, "Jason St. Peter" < jstpetersc@gmail.com >, Corey Sprague < csprague.sc@gmail.com >, Willian Vogt < williamvogt@gmail.com >, Sarah Bouria < sarah.bouria.sc@gmail.com >, Bill Fields < fieldswil@gmail.com >, Richard Dohoney < rich.dohoney@gmail.com >, Sarah Bouria < sarah.bouria.sc@gmail.com >, Bill Fields < fieldswil@gmail.com >, Richard Dohoney < rich.dohoney@gmail.com >, Cc: Doreen Twiss < doreen.twiss@bhred.org >

Thu, Dec 14, 2023 at 10:02 AM

All,

I'm writing to update you on an emerging situation.

On Friday, the GB Police Chief reached out to me to share that they were conducting an investigation related to a complaint about a text at the middle school.

The Chief then sent an officer in plain clothes at the end of the day to try to locate that text. They did not locate it.

The Chief is keeping who made the complaint anonymous.

The Chief has referred it to the DA. I think this is more a district policy matter than a legal one.

The book is not a class text but a supplemental material that students can request to sign out. The book is Gender Queer.

The book is a graphic novel and a memoir of a transgender person. It has won several awards and is the topic of some controversy. It depicts some images that some find offensive. At the same time, many see it as an important story helping build empathy and support for a marginalized group and helping trans or queer students make meaning.

We have policies in place if a parent has concerns about a text, but our policies did not anticipate this situation. In the former case, a form is completed and a reconsideration process takes place. In this type of case, many other districts form a review committee either of school, district and families or of the school committee to read and rate the book.

Other districts have done so with this book and choices have been to keep it, to limit it some by age or a warning label, or to exclude it. Most in the Northeast have kept it.

I have been in daily dialogue with our attorney.

This is something that many districts and libraries are working through.

Please call me if you have questions and direct others with questions to me.

Peter

## **EXHIBIT 8**

**From:** [Giarolo, Andrew \(BER\)](#)  
**To:** [Paul Storti](#); [O'Brien, Joseph \(BER\)](#)  
**Subject:** Muddy Brook Issue - Genderqueer Book  
**Date:** Thursday, December 14, 2023 11:39:00 AM

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Chief and Joe,

Upon further review, the DA has stated that this is not a criminal matter. DA has discussed this issue with the Superintendent. They will handle this matter internally and will determine the appropriate audience, if any, for this book. Thank you for your efforts to try to investigate this matter.

Andrew Giarolo  
Assistant District Attorney  
Berkshire District Attorney's Office  
7 North Street, First Floor  
Pittsfield, MA 01201

## **EXHIBIT 9**



Peter Dillon <peter.dillon@bhred.org>

**Note on book**

Berkshire Hills Regional School District via ParentSquare <donotreply@parentsquare.com>  
To: peter.dillon@bhred.org

Thu, Dec 14, 2023 at 4:09 PM

**Berkshire Hills Regional School District**

BHRSD Community,

On Friday, the GB Police Chief reached out to me to share that they were conducting an investigation related to a complaint about a book at the middle school.

At the end of the school day, an officer in plain clothes tried to locate that book. Principal Wheat spoke with the officer and with the teacher and they looked for the book, but did not find it.

The anonymous complaint was referred to the District Attorney by the Police.

The book in question is not a class text but a supplemental material that students can request to sign out. The book is Gender Queer.

The book is a graphic novel and a memoir of a nonbinary person. It has won several awards and is the topic of some controversy. It depicts some images that some find offensive. At the same time, many see it as an important story helping build empathy and support for a marginalized group and helping trans or queer students make meaning.

We have policies in place if a parent has concerns about a text, but our policies did not anticipate this situation. In the former case, a form is completed and a reconsideration process can take place. In these type of situations, many other districts form a review committee either of school, district and families, or of the school committee, to read and rate the book.



Other districts have done so with this book and choices have been to keep it, to limit it some by age or a warning label, or to exclude it. Most in the Northeast have kept it.

This is something that many districts and libraries are working through. Please feel free to reach out to me if you have questions.

Peter Dillon, Superintendent

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This email was sent from a notification-only address that cannot accept incoming email. Please do not reply to this message. Contact the school directly if you have any questions.

This message is intended for peter.dillon@bhrrsd.org. If you would like to stop receiving these emails, click here to unsubscribe.

ParentSquare · 6144 Calle Real, #200A · Goleta, CA 93117

## **EXHIBIT 10**

Peter Dillon &lt;peter.dillon@bhrsd.org&gt;

## Call

Sabourin, Julia (BER) <Julia.Sabourin@mass.gov>  
 To: "peter.dillon@bhrsd.org" <peter.dillon@bhrsd.org>

Mon, Dec 18, 2023 at 12:07 PM

Peter, thank you again for working with us last week. It certainly helped in closing this matter in a timely fashion.

Since we were unable to connect on the phone, I want to take an opportunity to follow up to this original email. I specifically want to touch on the statement, "I wish the school had been afforded the opportunity to follow them." that is in the original email at the bottom of the chain. When I read this statement, I was alarmed that school staff had not been afforded the opportunity to follow the officer in the school. It also sounded to me, based on the email below, that the police arrived unannounced which would have been extremely concerning as I am both a parent and have worked in school settings. I myself in fact was targeted by anti-LGBTQIA+ individuals when I taught for the way I supported one of my own transgender students coming out in my own classroom (...you were a part of this too and I am sure you remember it well).

I followed up with both the DA and the Chief of GBPD to see if the GBPD officer arrived unannounced to school staff and walked around the building alone. Here is the general reported timeline of events that I received from the chief.

An individual called the police department to make a report of obscene pornographic materials being made available to children in a middle school in a copy of Gender Queer. The caller met the criteria of law enforcement to remain anonymous. The Chief then called you and spoke with you about the report. You both expressed being unfamiliar with the material identified. According to the chief, you then followed up with Principal Miles Wheat. Miles also said he was unfamiliar with the alleged item being distributed. The District Attorney's Office's Child Abuse Unit and DA were notified that there was obscene pornographic material being distributed in the book at WEB middle school. The DA requested the material in question, a copy of Gender Queer, be identified and that it be examined for supposed obscene pornographic material. If there was in fact obscene pornographic material, it was requested to be removed.

At this point, an officer was sent to the school to identify the alleged item being distributed.

Miles met the officer at the school and together they walked to the alleged location of the item. The teacher was not in the room, so Miles went to find the teacher before they looked together for the item. When in the classroom the teacher could not locate the book. The teacher offered the GB officer an opportunity to look through items in the room, but he declined. The officer was in the building for approximately 7 minutes. During those seven minutes the officer was accompanied by school staff.

The alleged obscene pornographic copy of Gender Queer was never located. As the book was never located, and as the book Gender Queer in an unaltered state is not obscene, pornographic material, the District Attorney recommended that the investigation be closed. Gender Queer, in its original published state, is not obscene pornographic material. The DA stated that the availability of the book Gender Queer in an educational setting is not something law enforcement should be determining- this is the job of a school district, not police.

At this point, the District Attorney handed the matter back to the district and clearly stated that the investigation was hereby closed.

Gender Queer is the most targeted book by hate groups in this country and it joins one of 7 of the top 10 most banned books in America that touches on LGBTQIA+ themes. It is no secret that the LBGTQIA+ community is being aggressively targeted by violent, hateful extremist and that the community both deserves and requires increased protection from law enforcement and our office in order to stay safe.

As allies, we are duty bound to advocate for those targeted by hate and put at high risk of violence for the simple matter of the people they are.

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Police are duty bound to investigate reported criminal acts. As soon as it was determined that no criminal act took place, the investigation was closed.

This weekend synagogues across the country received bomb threats. While the threats were all found to not be credible, police still had the responsibility to investigate each and every temple who received the call or email. The GBPD responded to a threat targeting Hevreh. The department conducted their due diligence to ensure the safety of the community by searching the synagogue and stepping up patrols even though the GBPD most likely knew the threat to be false. Police must investigate reported crimes.

The caller in the case of reporting and obscene pornographic copy of Gender Queer was- in my opinion and many others- attempting to target the LGBTQIA+ community by calling in a false report of pornography in school. In my opinion this was an intentional act meant to threaten and intimidate an already marginalized community. That said, just like in the synagogue bomb threats this weekend, the police were duty bound to investigate. Law enforcement cannot pick and choose when to respond and when not.

I am pleased that the matter has been returned to the school district. LGBTQIA+ students, and all students, are better for being exposed to material that reflects all walks of life. Like you, I too hope the school committee refers the matter of the availability of the book Gender Queer to the district's curriculum review committee. The availability of the book is not one for law enforcement to make but it also should not one for a politically elected body (school committee) to make either. It should be determined by professional educators.

I hope the school committee follows your recommendations to return the matter of the book to your oversight.

Please let me know if there is anything else I can do.

Thank you,

Julia

[Quoted text hidden]