

**INDEPENDENT REVIEW OF THE ACTIONS TAKEN BY THE  
GREAT BARRINGTON POLICE DEPARTMENT AT THE  
W.E.B. DU BOIS MIDDLE SCHOOL  
ON DECEMBER 8, 2023**

**Submitted by:**

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## **ACKNOWLEDGEMENT**

Comprehensive Investigations and Consulting, LLC., was retained by the Town of Great Barrington to conduct an independent review of the actions of the Great Barrington Police Department at the W.E.B. Du Bois Middle School in response to a complaint that was received on December 8, 2023. Upon completion of the independent review, Comprehensive Investigations and Consulting, LLC., will provide a written report of findings, along with any proposed policy revisions.

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## REPORT OF INVESTIGATION

Comprehensive Investigations and Consulting, LLC., conducted the following interviews:

- Chief Paul Storti, Great Barrington Police Department
- Officer Joseph O'Brien, Great Barrington Police Department
- District Attorney Timothy Shugrue, Berkshire County District Attorney's Office
- Dr. Peter Dillon, Superintendent of Schools, Berkshire Hills Regional School District

Comprehensive Investigations and Consulting, LLC., reviewed the following material(s):

- Berkshire Hills Regional School District Investigative Report  
December 8, 2023 - Police Search, W.E.B. Du Bois Middle School,  
dated February 16, 2024, authored by Kevin M. Kinne, Cohen Kinne Valicenti and Cook LLP
- GBPD Incident Report, Incident #: 23-300-OF, Call #: 23-13206
- Body camera video of Officer Joseph O'Brien, dated 12/8/2023
- GBPD Policy 1.05, Preliminary Investigations, Effective Date: 9/30/2008
- Proposed revisions to GBPD Policy 1.05, Revision Date: 1/10/2024
- Berkshire Hills Regional School District Resolution, dated 1/25/2024
- M.G.L. c. 272, § 29 (Dissemination of Obscene Matter)

1. On March 3, 2024, Chief Paul Storti, of the Great Barrington Police Department (GBPD), was interviewed by Comprehensive Investigations and Consulting, LLC. This interview was conducted by telephone and was not recorded. Chief Storti was asked to explain the events which occurred at the W.E.B. Du Bois Middle School (the School) on December 8, 2023.
2. Chief Storti stated that on December 8, 2023, he received a telephone call from Officer Joseph O'Brien, GBPD, regarding a complaint (the Complaint) that he had received. Officer O'Brien relayed that the individual (the Complainant) reporting the Complaint wished to remain anonymous due to fear of retaliation. Chief Storti had taken a half day off work and was at his residence when Officer O'Brien telephoned him. Chief Storti stated that due to the seriousness of the allegations, he immediately responded to GBPD.
3. Upon his arrival at the police station, Chief Storti and Officer O'Brien had further conversation regarding the Complaint. According to Chief Storti, the Complainant alleged they had observed students from the School sitting on a teacher's (the Teacher) lap, the Complainant heard the Teacher tell students not to tell their parents, and the Complainant observed a book (the Book) on a table within the Teacher's classroom that depicted illustrations of a sexual content. The Complainant provided three photographs of these illustrations.
4. Officer O'Brien showed Chief Storti the photographs of the illustrations provided by the Complainant. Two of the photographs were of the front cover of the Book. The third photograph was of two interior pages of the Book. Chief Storti stated that the illustrations were concerning because there was no context provided. Chief Storti stated that upon reviewing the information, as well as the photographs, it was his opinion that the police department had a duty to immediately follow up on the Complaint.
5. Following his conversation with Officer O'Brien, Chief Storti telephoned Dr. Peter Dillon, Superintendent of the Berkshire Hills Regional School District. Chief Storti explained that he has a

“great” relationship with Dr. Dillon. According to Chief Storti’s narrative, contained in the GBPD Incident Report, Incident #: 23-300-OF, “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.’”<sup>1</sup>

6. Chief Storti stated that upon further conversation with Dr. Dillon, it was determined that no one was familiar with The Book. According to Chief Storti’s narrative, contained in the GBPD Incident Report, Incident #: 23-300-OF, “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.”<sup>2</sup>
7. Chief Storti was asked, based upon his training and experience, if he believed that the material was inappropriate and of a pornographic nature, as contemplated by M.G.L. c. 272, § 29 (Dissemination of Obscene Matter). He replied, “Yes.” He added that this was based, in part, because there were only three photographs, and no other context was provided. Chief Storti also explained that he was unable to determine the age of the individuals depicted in the illustrations and was unsure whether students had access to the book. “
8. Chief Storti was asked if he believed that he needed a warrant to search for the Book at the School. He replied, “No.” According to Chief Storti, Dr. Dillon gave verbal consent for Officer O’Brien to come to the School and search for the Book. During their conversation, Dr. Dillon had advised Chief Storti that he had arranged with Miles Wheat, Principal of the School, to meet with Officer O’Brien at the School.
9. Chief Storti stated that he believed that there was veracity to the Complaint. The Complainant had made themselves known to Officer O’Brien, and the Complainant had two photographs of the front cover of the Book, as well as a photograph of illustrations contained in the Book.
10. Chief Storti acknowledged that based upon his training and experience, he believed that the Complainant met the criteria to be considered a confidential informant. According to Chief Storti, the Complainant stated that they had first-hand knowledge of students sitting on the Teacher’s lap, the Complainant overheard the Teacher telling students not to tell their parents, and the Complainant had photographs of the illustrations of the alleged obscene material. According to Chief Storti’s narrative, contained in the GBPD Incident Report, Incident #: 23-300-OF, “The person requested to remain confidential, as they feared for any retaliation if it was discovered that they provided the information.”<sup>3</sup>
11. Chief Storti explained that he did not originally release information regarding the first two allegations, as he did not want to bring negative attention to the Teacher. Chief Storti stated that he met with several residents of the community, one-on-one, for approximately two weeks, following the Complaint. According to Chief Storti, members of the community felt that the police were going to the School to sensor educational material. Chief Storti stated that this was not the case.
12. On March 15, 2024, Officer Joseph O’Brien, GBPD, was interviewed by Comprehensive Investigations and Consulting, LLC. The interview was conducted by telephone. Officer O’Brien

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<sup>1</sup> Narrative of Chief Paul Storti, GBPD Incident Report, Incident #: 23-300-OF, dated 12/21/2023, Page 1

<sup>2</sup> Narrative of Chief Paul Storti, GBPD Incident Report, Incident #: 23-300-OF, dated 12/21/2023, Page 1

<sup>3</sup> Narrative of Chief Paul Storti, GBPD Incident Report, Incident #: 23-300-OF, dated 12/21/2023, Page 1

stated that he has been employed as a police officer, with GBPD, for approximately nineteen years. He acknowledged that he has read and understands the policies, procedures, rules, and regulations of GBPD.

13. On December 8, 2023, Officer O'Brien was working at GBPD in his capacity as a police officer. He stated that he was working the day shift, 8am to 4pm, and was assigned as the desk officer. He acknowledged that he was in uniform. He stated that an individual (the Complainant) came into GBPD, wishing to remain anonymous. The Complainant approached Officer O'Brien and stated that they had something of concern that they wanted to talk about. The Complainant proceeded to tell Officer O'Brien that they had observed a teacher (the Teacher) at the Middle School (the School) having students sit on their lap. The Complainant stated that they overheard conversations where the Teacher had told students not to tell their parents. The Complainant also stated that they found a book (the Book) in the room, that they found very concerning. The Complainant subsequently produced three photographs of the Book. According to Officer O'Brien, the photographs were of the cover of the Book and one internal page.
14. According to Officer O'Brien's narrative, contained in the GBPD Incident Report, Incident #: 23-300-OF, "The individual then presented 3 photographs of a book that was located on a desk in [the Teacher's] 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 discusses 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."<sup>4</sup>
15. Officer O'Brien was asked if he felt that the Complainant met the criteria to be considered a confidential informant. Officer O'Brien explained that the Complainant identified themselves to him and presented themselves in person. He added, "And yes, based on that information, [they] showed me credibility and knowledge."<sup>5</sup> Officer O'Brien acknowledged that this was based upon his training and experience.
16. Officer O'Brien was asked if, upon observing the three photographs that the Complainant provided, he immediately considered the illustrations to be obscene. He replied, "Based on my training and given the context of where it was being presented, it met the criteria of the statute for dissemination, uh, possibly of obscene matters to minors."<sup>6</sup>
17. Officer O'Brien stated that after the Complainant left the police station, he immediately contacted Chief Storti by telephone to inform him of the Complaint. Officer O'Brien was asked if there was any discussion about consulting with the District Attorney's Office. He stated not at that time. Officer O'Brien was then asked if, prior to going to the School, he and Chief Storti discussed possibly obtaining a search warrant. He stated that he did not believe so.
18. Officer O'Brien was asked if it was his understanding that GBPD had received consent from the School Department to look for the Book. He replied, "Yes. In fact, uh, Chief Storti spoke with the Superintendent directly, um, with me in the room at one point, and, um, he agreed for me to go up

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<sup>4</sup> Narrative of Officer Joseph O'Brien, GBPD Incident Report, Incident #: 23-300-OF, dated 12/21/2023, Page 1

<sup>5</sup> Transcript of interview with Officer Joseph O'Brien, dated March 15, 2024, Page 2

<sup>6</sup> Transcript of interview with Officer Joseph O'Brien, dated March 15, 2024, Page 2

there. In fact, he even told me what time it was good to go up there, um, to meet with the Principal and -- and go there.”<sup>7</sup>

19. Officer O’Brien acknowledged responding to the School in plain clothes and an unmarked cruiser. Once at the School, he met with the Principal, Mr. Wheat. According to Officer O’Brien’s narrative, contained in the GBPD Incident Report, Incident #: 23-300-OF, Mr. Wheat informed Officer O’Brien that the Teacher runs a LGBTQ club/meeting group that typically meets during the day, that he had no concerns regarding the allegations against the Teacher, and that during the meetings the doors are kept open. Mr. Wheat also acknowledged that he was aware that the group, on occasion, may suggest not talking to parents or others about what is discussed in the group. According to Officer O’Brien’s narrative, contained in the GBPD Incident Report, Incident #: 23-300-OF, after this discussion, Mr. Wheat then brought Officer O’Brien to the Teacher’s classroom.
20. During his interview, Officer O’Brien stated that he and Mr. Wheat then walked to the Teacher’s classroom. Upon arrival at the Teacher’s classroom, it was observed that the Teacher was not in the classroom. Mr. Wheat went to look for the Teacher while Officer O’Brien waited in the hallway, outside of the classroom.
21. When Mr. Wheat and the Teacher returned, they briefly went inside the classroom to speak. Officer O’Brien stated that he remained in the hallway, outside of the classroom. Officer O’Brien was asked if the door remained open while Mr. Wheat and the Teacher were speaking privately in the classroom. He replied, “Yeah, they just kind of stepped around the corner. Um, you know, I mean, I’m, I think it was a matter of probably a minute or less they might’ve went in there alone.”<sup>8</sup> Officer O’Brien stated he was then invited into the classroom by Mr. Wheat.
22. Officer O’Brien was asked if, after being invited into the classroom, he shut the door. He replied, “Um, my recollection is I shut it to give the teacher some privacy.”<sup>9</sup> He added, “Um, obviously we were trying to keep this, you know, a -- a as least intrusive as it could to both the, the school community and the teacher, um, given this an allegation, and it still could be sensitive to [their] career.”<sup>10</sup>
23. Officer O’Brien was then asked if it was his intention to block or attempt to block the door so that the Teacher could not leave. He replied, “No.” He explained that when he was invited into the classroom, both Mr. Wheat and the Teacher were already in the room. The bookcase, where the Teacher stated the Book may be located, was right in front of the door. Officer O’Brien stated, “So of course, me being the last person in, I would be between them and the door at that point. Um, there was nothing in my mind that I thought I was blocking anybody or even took that into consideration.”<sup>11</sup>
24. Officer O’Brien was asked if, at any time, the Teacher asked to leave. He replied, “No.” He was then asked if, at any time, the Teacher approached the door. He again replied, “No.” Officer O’Brien stated that in fact, the Teacher told him that he was welcome to walk around the classroom. Officer O’Brien described the tone of the conversation between the three of them as, “fairly casual.” He described the Teacher as, “polite” and “friendly.” He described Principal Wheat as, “cooperative and polite.”

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<sup>7</sup> Transcript of interview with Officer Joseph O’Brien, dated March 15, 2024, Page 3

<sup>8</sup> Transcript of interview with Officer Joseph O’Brien, dated March 15, 2024, Page 3

<sup>9</sup> Transcript of interview with Officer Joseph O’Brien, dated March 15, 2024, Page 4

<sup>10</sup> Transcript of interview with Officer Joseph O’Brien, dated March 15, 2024, Page 4

<sup>11</sup> Transcript of interview with Officer Joseph O’Brien, dated March 15, 2024, Page 4

25. Officer O'Brien showed the Teacher a photograph of the Book. According to Officer O'Brien, "Um, [the Teacher] acknowledged it was there and, you know, cooperative with [their] answers. And [the Teacher] said, go ahead and look around the room or, or look on the bookcase, look on my desk. And items like that."<sup>12</sup> Officer O'Brien estimated that the Teacher invited him to look around for the Book at least three times.
26. Officer O'Brien stated, "Um, you know, as we were kind of finishing -- finishing up, um, we talked about the follow up of it. Um, you know, I know everybody's trying to highlight a comment. I said like, 'we could search the whole school,' and they're missing the context of that for sure."<sup>13</sup> According to Officer O'Brien, what he meant was that the three of them could search everywhere for the Book and may not find it anyway. According to Officer O'Brien's narrative, contained in the GBPD Incident Report, Incident #: 23-300-OF, "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."<sup>14</sup>
27. Officer O'Brien was asked if, at any time, he meant that he could search every room in the School, without consent or a search warrant, in an attempt to locate the Book. He replied, "No." Officer O'Brien was then asked if consent was revoked at any point. He replied, "However, that day, no, nobody revoked us or consent that day at all."<sup>15</sup> Officer O'Brien estimated the entire interaction with the Teacher lasted approximately five minutes.
28. After leaving the school, Officer O'Brien stated that he called Chief Storti to provide an update. Chief Storti asked Officer O'Brien to contact the District Attorney's Office. Officer O'Brien was asked about his conversation with the District Attorney's Office. Officer O'Brien stated, "At that point, they, you know, they were under the initial impression that it was probably going to be treated as a criminal matter."<sup>16</sup>
29. Officer O'Brien was asked if at any point during this whole incident, he was ever informed by anyone at the District Attorney's Office that his actions were inconsistent with policy or law. He replied, "No." He was then asked if he personally believed that an illegal search had occurred for the Book while at the School. He again replied, "No."
30. Officer O'Brien was asked if he personally believed that the actions of GBPD, in regard to this incident, were "overreaching" at any time. He replied, "No." Lastly, Officer O'Brien was asked if he believed that his actions, as well as the actions of GBPD, were appropriate in regard to the incident at the School, given all the information that they had at the time. He replied, "Yes."
31. On March 22, 2024, District Attorney Timothy Shugrue was interviewed by Comprehensive Investigations and Consulting, LLC. This interview was conducted by telephone. DA Shugrue acknowledged receiving a phone call on December 8, 2023, at approximately 4:18pm, regarding a concern at the School. He stated that the initial information he received was that potential graphic pornographic material was being shown to students at the School. DA Shugrue added that he did not observe the photographs of the illustrations contained in the Book until four or five days later.
32. DA Shugrue was asked if, based upon the information that he had at that time, he believed that it was lawful for GBPD, specifically Officer O'Brien, to go to the School and look for the Book. He replied,

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<sup>12</sup> Transcript of interview with Officer Joseph O'Brien, dated March 15, 2024, Page 4

<sup>13</sup> Transcript of interview with Officer Joseph O'Brien, dated March 15, 2024, Page 5

<sup>14</sup> Narrative of Officer Joseph O'Brien, GBPD Incident Report, Incident #: 23-300-OF, dated 12/26/2023, Page 3

<sup>15</sup> Transcript of interview with Officer Joseph O'Brien, dated March 15, 2024, Page 6

<sup>16</sup> Transcript of interview with Officer Joseph O'Brien, dated March 15, 2024, Page 7

"...I, I think it was -- it was very warranted and appropriate for there to be a further inquiry because an allegation was made."<sup>17</sup> He added, "...and I think he did the right thing by calling the school first and not just showing up there and responding and then getting actually the consent from the Superintendent."<sup>18</sup> According to DA Shugrue, the officer had a duty to inquire because an allegation had been made.

33. DA Shugrue acknowledged that in his professional opinion, the illustrations could have been considered a violation of Massachusetts General Law Chapter 272, Section 29, Dissemination of Obscene Matter. He added that based upon what was reported to GBPD, it would not have been appropriate for Officer O'Brien not to have responded.
34. DA Shugrue was asked if he believed that the Complainant met the criteria to be considered a confidential informant. He replied, "Based upon what I had been told at the time, I believe that he was -- that he would be considered a confidential informant."<sup>19</sup>
35. DA Shugrue was asked if, at any time, in his professional opinion as District Attorney, he considered the actions of Officer O'Brien, or the actions of GBPD, to constitute an illegal or warrantless search. He replied, "Absolutely not. Not when -- especially when you had consent, there was nothing -- they had full consent to go there."<sup>20</sup>
36. DA Shugrue was then asked if he considered the actions of Officer O'Brien, or the actions of GBPD, to be "overreaching." He replied, "Absolutely not. Absolutely not. Not when, again, we come back to the consent issue."<sup>21</sup> He added if it had been discovered that day that the Book was a coming-of-age book, "...this thing could have been put to rest on that day. Unfortunately, nobody knew what the Book was, or no one saw the material until much later."<sup>22</sup>
37. On March 28, 2024, Dr. Peter Dillon was interviewed by Comprehensive Investigations and Consulting, I.I.C. This interview was conducted by telephone. Dr. Dillon stated that he is employed by the Berkshire Hills Regional School District, as the Superintendent of Schools. He added that he is finishing his fifteenth year in that role.
38. In his role as Superintendent, Dr. Dillon explained that he essentially supervises the whole school district. He stated that there are approximately three hundred employees, twelve hundred students and three schools, each with a principal. He added that he supervises the principals. Dr. Dillon stated that his major responsibilities include keeping the students safe and supporting their educational and personal growth.
39. Dr. Dillon was asked to describe his relationship with Chief Storti. He explained that historically, it has been "quite positive," since Storti has been in the role of Chief. He added that they have worked quite collaboratively.
40. Dr. Dillon acknowledged receiving a phone call from Chief Storti on December 8, 2023. According to Dr. Dillon, Chief Storti telephoned him and shared concerns about a complaint (the Complaint) that he had received at the police department. Regarding this Complaint, Dr. Dillon stated, "...so it was

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<sup>17</sup> Transcript of interview with District Attorney Timothy Shugrue, dated March 22, 2024, Page 2

<sup>18</sup> Transcript of interview with District Attorney Timothy Shugrue, dated March 22, 2024, Page 2

<sup>19</sup> Transcript of interview with District Attorney Timothy Shugrue, dated March 22, 2024, Page 3

<sup>20</sup> Transcript of interview with District Attorney Timothy Shugrue, dated March 22, 2024, Page 3

<sup>21</sup> Transcript of interview with District Attorney Timothy Shugrue, dated March 22, 2024, Page 3

<sup>22</sup> Transcript of interview with District Attorney Timothy Shugrue, dated March 22, 2024, Page 3

the book [the Book], it was kids sitting on a teacher's [the Teacher] lap. And then the third allegation was that [the Teacher] had been reported to be instructing the kids, or the young people, to not share what was being discussed, with their parents."<sup>23</sup>

41. Dr. Dillon was asked what Chief Storti told him about the person that reported the allegations (the Complainant). He replied, "Nothing. And my recollection is I repeatedly asked for who that person was."<sup>24</sup> According to Dr. Dillon, Chief Storti stated that the Complainant was anonymous, and that's sort of where it was left. He acknowledged that Chief Storti had, at some point, shared with him that that Complainant wanted to remain anonymous due to fear of retaliation for reporting the allegations to the police department.
42. Dr. Dillon explained that during their initial phone call, Chief Storti had described the photographs of the illustrations as inappropriate or something similar. Dr. Dillon believed that Chief Storti may have also texted him the images of a couple of pages out of the book. He was unsure if this was during the first phone call or a subsequent phone call.
43. Dr. Dillon believes that he then conducted some research on the Book. Dr. Dillon stated, "And later that day, I think I learned that on the one hand, the Book had won several awards and was quite celebrated. And on the other hand, some people saw it as provocative, offensive, or even accused it of being pornographic in nature."<sup>25</sup> He could not recall if he conducted this research before, after or while Officer O'Brien was at the School.
44. Dr. Dillon was asked about his initial thoughts upon seeing the photographs of the illustrations of the Book. He replied, "Out of context, they appeared potentially provocative. Later, I got a copy of the Book and read it cover to cover. And in the context of reading it, cover to cover, the context of it made more sense."<sup>26</sup>
45. Dr. Dillon believes he spoke with Chief Storti on three occasions that day, prior to Officer O'Brien going to the School. Between these three phone calls, Dr. Dillon stated that he also spoke individually with the school principal, Mr. Wheat and the school committee chair, Mr. Bannon. According to Dr. Dillon, during the first conversation with both Mr. Wheat and Mr. Bannon, he discussed the three allegations that were reported by the Complainant. Dr. Dillon stated, "I think that the second one with the principal was around the possibility of a search to support the investigation. And a nuanced thing is some people thought the search was all about the Book, and initially I thought the search was as much about the other two allegations as the Book."<sup>27</sup>
46. Dr. Dillon was asked if there was ever any talk with Mr. Bannon or Mr. Wheat about obtaining a search warrant. He replied, "No." Dr. Dillon also did not believe there was any discussion with Chief Storti, Mr. Bannon or Mr. Wheat about the fact that this specific scenario was not contemplated by the policies in place at the School at that time.
47. Dr. Dillon explained that he and Chief Storti discussed that if they were going to proceed with the investigation, could it be conducted in a way that was as unobtrusive as possible. This included an officer in plain clothes and an unmarked cruiser. They also discussed having an officer respond to the school after dismissal, after most students were out of the building.

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<sup>23</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Page 2

<sup>24</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Page 2

<sup>25</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Page 3

<sup>26</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Page 3

<sup>27</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Pages 3-4

48. Dr. Dillon was advised that in his narrative, contained in the incident report, Chief Storti wrote, "Dillon said he did not have an issue with us coming to the school to see if the book was present in the classroom...."<sup>28</sup> Dr. Dillon was asked if that was his recollection of what transpired during their conversation. He replied, "My recollection's a little broader than that, so I wouldn't have stated it the same way. I would've sort of said something more broadly, like, 'Dillon said, it was okay for us to proceed with an investigation about the three items that had been raised.'"<sup>29</sup>
49. Dr. Dillon then explained that years before he began his employment with the school district, there was an allegation of sexual abuse by a staff person that went to criminal court and was unfounded. According to Dr. Dillon, it also went to civil claim and was settled. Dr. Dillon stated that this weighed heavy on his decision.
50. Dr. Dillon acknowledged that there was no discussion on how they would proceed if the Book was found in the Teacher's classroom. He also acknowledged that there was no discussion, at that point, regarding obtaining a search warrant. Dr. Dillon explained, "In hindsight, there probably should have been a warrant all along, but when it was perceived as a broader investigation, I had one attitude towards it. And if it had been a much narrower investigation, I might've had a different attitude toward it."<sup>30</sup>
51. Dr. Dillon was asked if it was his belief, given his position as Superintendent, that he had the authority to give Great Barrington Police Department consent to look for the Book at the School. He replied, "I did, and in hindsight, if I could do this again, I would be very adamant to ask for a warrant."<sup>31</sup>
52. Dr. Dillon later clarified stating that he believed he had the authority to give consent for the police department to investigate the three allegations that were presented to him; the Book, the allegation of inappropriate touching, and the allegation of "things being kept secret." Dr. Dillon stated, "And those three things were used, in my mind, to open the door to ask me to approve the investigation."<sup>32</sup> He explained that the context for conducting a search for the Book is very different than the context for conducting an investigation into what may be perceived as an imminent threat. He added that the allegation of inappropriate touching and the allegation of things being kept secret, he saw as an imminent threat.
53. Dr. Dillon was then asked if during his conversation with Chief Storti, he ever explicitly stated that his consent was limited to the allegation of physical touching, or if it was general consent to go to the School and conduct a further inquiry. He replied, "Yeah. Around all three things."<sup>33</sup>
54. Dr. Dillon was asked if Mr. Wheat, based upon his position as principal of the School, had the authority to revoke consent for Officer O'Brien to look for the book. He replied, yes and no. He explained that they both had the formal authority to say no; however, he believes that law enforcement, by their very role, can make it hard for people to say no to them. Dr. Dillon added that Chief Storti works every day in law enforcement and may have known better that in this kind of context, getting a warrant may have been more appropriate, if not necessary.

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<sup>28</sup> Narrative of Chief Paul Storti, GBPD Incident Report, Incident #: 23-300-OF, dated 12/21/2023, Page 1

<sup>29</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Pages 4-5

<sup>30</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Page 5

<sup>31</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Page 6

<sup>32</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Page 6

<sup>33</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Page 6

55. Dr. Dillon explained that he made his decision based on incomplete and inaccurate information. He added that at the time, he made the best decision he could make, based on the information he had.
56. Dr. Dillon was asked about School policies with respect to teachers' expectations of privacy regarding books in their classrooms. He stated that he did not want to speculate without having the policies open in front of him. Later that afternoon, Dr. Dillon emailed three School policies; however, none explicitly addressed privacy.
57. On March 29, 2024, Comprehensive Investigations and Consulting, LLC., spoke with Attorney Howard M. Cooper, who represents the Teacher. A request was made to interview the Teacher regarding this investigation. As of the writing of this report, a response regarding this interview has not been received.

## CONCLUSION

1. On December 8, 2023, Officer O'Brien, GBPD, received a complaint (the Complaint). The individual (the Complainant) making the Complaint requested to remain anonymous. According to Officer O'Brien, the Complainant arrived at the police station in person and identified themselves. The Complainant stated that: (1) they had first-hand knowledge of students sitting on a teacher's (the Teacher) lap, (2) the Complainant overheard the Teacher telling students not to tell their parents, and (3) the Complainant had three photographs of illustrations of alleged obscene material, which they observed in the Teacher's classroom at the W.E.B. Du Bois Middle School (the School). DA Shugrue, Chief Storti and Officer O'Brien each acknowledged that the Complainant met the criteria to be considered a "confidential informant."
2. Based on all the information, Chief Storti believed that the police department had a duty to immediately follow up on the Complaint. DA Shugrue stated that they would have been frowned upon if they did not look into that inquiry further.
3. Chief Storti contacted Dr. Peter Dillon, Superintendent of Berkshire Hills Regional School District, regarding the Complaint. Chief Storti stated that he has a great relationship with Dr. Dillon. Dr. Dillon stated that historically, his relationship with Chief Storti has been quite positive. During their phone conversation, Dr. Dillon believes that Chief Storti may have also texted him the images of the illustrations of the Book. When he initially observed the photographs of the illustrations, Dr. Dillon stated that out of context, they appeared potentially provocative. Chief Storti and Dr. Dillon determined that no one knew what the Book was about. Chief Storti stated that the illustrations were concerning because there was no context provided.
4. Dr. Dillon explained that later that day, he conducted some research on the Book. He stated that on the one hand, the Book had won several awards and was quite celebrated. On the other hand, some people saw it as provocative, offensive, or even accused it of being pornographic in nature.
5. DA Shugrue acknowledged that in his professional opinion, the illustrations could have been considered a violation of Massachusetts General Law Chapter 272, Section 29, Dissemination of Obscene Matter. Chief Storti also acknowledged that, based upon his training and experience, the material was inappropriate and of a pornographic nature. Chief Storti added that this was based, in part, because there were only three photographs, and no other context was provided. Officer O'Brien stated that based on his training and given the context of where it was being presented, the illustrations met the criteria for dissemination of obscene matters to minors.
6. Dr. Dillon stated that he believes that he and Chief Storti had three separate phone conversations that day. Dr. Dillon stated that he also spoke with the school principal, Mr. Wheat and the school committee chair, Mr. Bannon, regarding the allegations. Dr. Dillon believes that his second conversation with Mr. Wheat was around the possibility of a search to support the investigation. Dr. Dillon added that some people thought the search was all about the Book; however, he initially thought the search was as much about the other two allegations as the Book. Dr. Dillon acknowledged that during his conversation with both Mr. Wheat and Mr. Bannon, there was no discussion about obtaining a search warrant.
7. According to Chief Storti, Dr. Dillon gave verbal consent for Officer O'Brien to come to the School and search for the Book. Dr. Dillon acknowledged that based upon his position as Superintendent, he had the authority to give Great Barrington Police Department consent to look for the Book at the School. During his interview, Dr. Dillon stated that he was not approving only the investigation into

the Book; he was approving the investigation into the other two allegations, that at the time, he perceived as more or equally pressing. Dr. Dillon explained that he saw the other two allegations as an “imminent threat.” Dr. Dillon acknowledged that Chief Storti had consent to conduct an investigation around the Book, and an allegation of inappropriate touching, and an allegation about telling kids to keep secrets. He added that he saw what Chief Storti was asking for as a package deal; for an investigation of all three allegations.

8. During his interview, Dr. Dillon stated, “And in hindsight, when the investigation shifted from being about three things to one thing, there might’ve been an opportunity there to pause and have a conversation about a warrant.”<sup>34</sup> He added, “In hindsight, there probably should have been a warrant all along; but when it was perceived as a broader investigation, I had one attitude towards it. And if it had been a much narrower investigation, I might’ve had a different attitude toward it.”<sup>35</sup>
9. Dr. Dillon then arranged for Mr. Wheat to meet with Officer O’Brien at the School. In order to be as unobtrusive as possible, it was decided that Officer O’Brien would respond to the School at the end of the school day, in plain clothes and in an unmarked cruiser.
10. Officer O’Brien subsequently met with Mr. Wheat at the School. They had some initial conversation in Mr. Wheat’s office and then walked to the Teacher’s classroom together. When the Teacher was not observed to be in the classroom, Mr. Wheat left Officer O’Brien in the hallway, outside of the classroom, and went to look for the Teacher.
11. Mr. Wheat and the Teacher returned to the classroom and briefly went inside the classroom to speak. Officer O’Brien remained in the hallway, outside of the classroom. Mr. Wheat then invited Officer O’Brien into the classroom. According to Officer O’Brien, he shut the door to the classroom to be provide privacy for the Teacher. He stated that it was not his intention to block the door so that the Teacher could not leave.
12. Officer O’Brien showed the Teacher a photograph of the Book. The Teacher acknowledged that the Book was there and advised Officer O’Brien that he was welcome to look around the classroom. Officer O’Brien estimated that the Teacher invited him to look around for the Book, on at least three occasions. The following are excerpts from the transcript of Officer O’Brien’s body camera video on December 8, 2023:
  - [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.
  - [00:02:24] **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.
  - [00:04:27] **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 just I see what looks like -- maybe this tin cup or papers and what looks like a desk.

<sup>34</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Page 5

<sup>35</sup> Transcript of interview with Dr. Peter Dillon, dated March 28, 2024, Page 5

- [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.<sup>36</sup>

13. Officer O'Brien acknowledged that he made the comment, "we can search the whole school," towards the end of their conversation. Officer O'Brien stated that the comment was taken out of context. Officer O'Brien explained that he meant that the three of them could search the entire school and still not be able to find the Book. He did not mean he could search every room in the School without a search warrant or consent. The following are excerpts from the transcript of Officer O'Brien's body camera video on December 8, 2023:

- [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 this 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.
- [00:05:26] **Officer O'Brien:** Don't specifically see it anywhere right now. 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 visual content.
- [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.
- [00:07:26] **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.<sup>37</sup>

14. Dr. Dillon was asked if, based upon Mr. Wheat's position as principal of the School, he had authority to revoke consent for Officer O'Brien to look for the Book. According to Dr. Dillon, he, and Mr. Wheat both had the formal authority to say no; however, law enforcement, by their very role can make it hard for people to say no to them. Dr. Dillon added that at the time, he made the best decision he could based on the information he had.

15. According to Chief Storti's narrative, contained in the GBPD Incident Report, Incident #: 23-300-OF, he and Superintendent Dillon spoke on Tuesday, December 12, 2023. In his narrative, Chief Storti wrote, "Superintendent Dillon and I discussed the policies and procedures they have to report a

<sup>36</sup> Transcript of Officer Joseph O'Brien's body camera video footage, contained in the Berkshire Hills Reginal School District Investigative Report, December 8, 2023 - Police Search, W.E.B. Du Bois Middle School, dated February 16, 2024, authored by Kevin M. Kinne, Cohen Kinne Valicenti and Cook LLP

<sup>37</sup> Transcript of Officer Joseph O'Brien's body camera video footage, contained in the Berkshire Hills Reginal School District Investigative Report, December 8, 2023 - Police Search, W.E.B. Du Bois Middle School, dated February 16, 2024, authored by Kevin M. Kinne, Cohen Kinne Valicenti and Cook LLP

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."<sup>38</sup>

16. According to Officer O'Brien's narrative, contained in the GBPD Incident Report, Incident #: 23-300-OF, "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 Dillon had talked directly and that it was no longer a criminal matter and the school would handle it internally."<sup>39</sup>
17. In **Plock v. Board of Education**, 545 F.Supp. 2d 755 (U.S. District Court for the Northern District of Illinois 2007), the federal district court held that teachers do not have an expectation of privacy in their classrooms. The classroom is not reserved for the teacher's private use, but is open to students, other faculty, administrators, custodians and parents. Furthermore, Officer O'Brien's search was limited in scope and did not include a search of the Teacher's desk.
18. Based upon a thorough review of all submitted documents, information, and recordings, as well as interviews of relevant parties; it is the opinion of Comprehensive Investigations and Consulting, that based upon the information that existed at that time, Chief Storti and Officer O'Brien reasonably believed that:
  - a) the Complainant met the criteria to be considered a "confidential informant."
  - b) the initial photographs of the illustrations contained within the Book, without further context, were reasonably considered inappropriate and of a pornographic nature, as contemplated by M.G.L. c. 272, § 29 (Dissemination of Obscene Matter).
  - c) the police department had a duty to inquire further, based upon the nature of the allegations.
  - d) consent was given by Dr. Peter Dillon, Superintendent of the Berkshire Hills Regional School District, to respond to the School and conduct a further inquiry; which included a search for the Book.
  - e) the consent given by Dr. Dillon was not limited.
  - f) consent to search for the Book was not revoked at any time.
  - g) while in the Teacher's classroom, Officer O'Brien received consent from the Teacher to look for the book, on at least four occasions.

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<sup>38</sup> Narrative of Chief Paul Storti, GBPD Incident Report, Incident #: 23-300-OF, dated 12/21/2023, Page 2

<sup>39</sup> Narrative of Officer Joseph O'Brien, GBPD Incident Report, Incident #: 23-300-OF, dated 12/26/2023, Page 3

## **FINDINGS**

Based upon a thorough review of all submitted documents, information, and recordings, as well as interviews of relevant parties; Comprehensive Investigations and Consulting, LLC., concludes the following:

Comprehensive Investigations and Consulting, LLC., finds that the actions of Officer Joseph O'Brien, as well as the actions of the Great Barrington Police Department, regarding the incident at the W.E.B. Du Bois Middle School, on December 8, 2023, were lawful and proper. **EXONERATED**

## REVIEW OF GBPD POLICY 1.05 - PRELIMINARY INVESTIGATIONS

1. Comprehensive Investigations and Consulting, LLC., reviewed Great Barrington Police Department Policy and Procedure No. 1.05, Preliminary Investigations, Effective Date: 09/03/2008. Comprehensive Investigations and Consulting, LLC., also reviewed the proposed revised version of Great Barrington Police Department Policy and Procedure No. 1.05, Preliminary Investigations, Revision Date: 01/10/2024. The following proposed language had been added to the policy:
  - Preliminary investigations are conducted on all incidents that violate the criminal code of the Commonwealth or town bylaws, or have the potential to result in a criminal or civil action. We need to verify the information provided by the complainant to determine if it is credible or not. The immediate police response and preliminary investigation is essential to discover facts, verify information, speak to witnesses and preserve physical evidence.
  - Reports of incidents involving the possession or use of educational materials within an educational institution/school in the Town of Great Barrington shall be addressed as follows. For purposes of this rule "educational materials" shall mean books, other written materials of any kind, images, and video and/or audio recordings, that relate or may relate to curriculum, learning, and/or instruction approved by the educational institution.
  - Upon receipt of a report of an incident allegedly involving such educational materials, the Chief of Police, or their designee, shall be notified immediately. The Chief of Police, or their designee, shall immediately notify the Superintendent/chief administrative officer of the school district/institution and the Town Manager. The Chief of Police/designee shall determine whether any applicable policies of the school district/institution regarding such educational materials and access by administrators to such materials have been or are being complied with. No search for educational material shall be conducted within the applicable school building by members of the Police Department unless such search complies with the requirements of the Fourth Amendment to the United States Constitution, including but not limited to any requirement that the search be conducted pursuant to a warrant issued by a court of competent jurisdiction.
2. The previous Great Barrington Police Department Policy and Procedure No. 1.05, Preliminary Investigations, Effective Date: 09/03/2008, did not contain any language specifically contemplating the events that transpired on December 8, 2023, at the W.E.B. Du Bois Middle School. The proposed revised Great Barrington Police Department Policy and Procedure No. 1.05, Preliminary Investigations, Revision Date: 01/10/2024, includes language specific to "educational materials within an educational institution/school in the Town of Great Barrington." The term "educational materials" is defined in the proposed revised policy.
3. The proposed revised policy also includes specific actions to be performed by officers receiving complaints regarding educational materials, within an educational institution/school in the Town of Great Barrington. This includes notifications to appropriate personnel at the police department, the school district, and the Town.
4. In its current form, the revised proposed policy states, "The Chief of Police/designee shall determine whether any applicable policies of the school district/institution regarding such educational materials and access by administrators to such materials have been or are being complied with." Comprehensive Investigations and Consulting, LLC., recommends the following revision: "The Chief of Police/designee, in conjunction with the Superintendent/chief administrative officer of the school

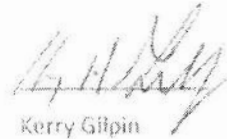
district/institution, and the Town Manager, shall determine whether any applicable policies of the school district/institution, regarding such educational materials and access by administrators to such materials, have been or are being complied with.”

5. The proposed revised policy also includes language prohibiting searches for educational material within applicable school buildings, by members of the Police Department, unless such search complies with the requirements of the Fourth Amendment to the United States Constitution, including but not limited to any requirement that the search be conducted pursuant to a warrant issued by a court of competent jurisdiction.
6. It is the opinion of Comprehensive Investigations and Consulting, LLC., that the proposed revisions, along with the recommendation outlined in paragraph 4, contain sufficient language to guard against any future incidents similar to those which occurred at the W.E.B. Du Bois Middle School on December 8, 2023. It is recommended that the proposed revised policy be promulgated, disseminated to all officers employed by GBPD, and that all officers receive formal training regarding the revised policy.
7. Upon reviewing the Memorandum of Understanding (MOU) between Berkshire Hills Regional School District and the Great Barrington Police Department, July 1, 2019, to June 30, 2021, it also did not appear to contain any language specifically contemplating the events that transpired on December 8, 2023, at the W.E.B. Du Bois Middle School. It appeared that this MOU expired on June 30, 2021. In this regard, it is the recommendation of Comprehensive Investigations and Consulting, LLC., that an updated MOU, between Berkshire Hills Regional School District and the Great Barrington Police Department be completed. All officers employed by GBPD should receive formal training regarding this MOU.

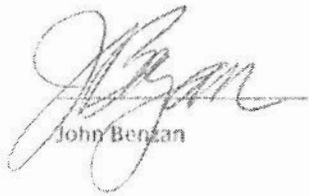
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daniel Bennett".

Daniel Bennett

A handwritten signature in cursive script, appearing to read "Kerry Gilpin".

Kerry Gilpin

A handwritten signature in cursive script, appearing to read "John Benzan".

John Benzan