IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KATHERINE RINDERLE et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 1:24-cv-00656-JPB
COBB COUNTY SCHOOL DISTRICT et al.,	)	
Defendants.	)	

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

The United States respectfully submits this Statement of Interest under 28 U.S.C. § 517[1] to address the legal standards governing private retaliation claims for damages under Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. § 1681 *et seq.* The U.S. Department of Justice and the U.S. Department of Education enforce Title IX, which protects individuals from sex discrimination, including sex-based harassment and retaliation, in federally funded education programs and activities.

[1] "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

The United States has an interest in the proper interpretation of Title IX and in ensuring that federal funding recipients do not retaliate against individuals who complain of sex discrimination. In particular, the United States has a significant interest in ensuring that teachers, who often possess unique and direct knowledge of discrimination experienced by students in their schools, can speak out about what they reasonably and in good faith believe to be a hostile educational environment based on sex, without fear of reprisal. *See Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 180-81 (2005) ("Without protection from retaliation, individuals who witness discrimination would likely not report it, indifference claims would be short circuited, and the underlying discrimination would go unremedied. . . . Moreover, teachers . . . are often in the best position to vindicate the rights of their students[.]"). Indeed, retaliation against teachers can deter students themselves from coming forward to report discrimination they experience, as they see people more powerful than they are being penalized for speaking out.

The United States therefore respectfully submits this Statement of Interest to set out the applicable legal standards for private retaliation claims for damages under Title IX. The United States takes no position on the merits of Plaintiffs' Title IX claim, or on the accuracy of the allegations in support of that claim. The United States only seeks to share its view that, when assessing whether a plaintiff alleging retaliation under Title IX had a reasonable, good faith belief that a hostile

environment based on sex existed for students, courts should consider, as part of the totality of circumstances, the alleged effects of school policies, like the policies at issue in this case, on students' educational environment.[2]

BACKGROUND

In 2022, the State of Georgia passed a law prohibiting public school employees from "espousing personal political beliefs" concerning "divisive concepts," which the statute defines through example by providing a list of concepts regarding race and racism. O.C.G.A. § 20-1-11 *et seq.* In July 2022, following enactment of this law, the Cobb County School District ("District") adopted official policies prohibiting school employees from using classroom instruction time to espouse personal political beliefs concerning "divisive concepts" as defined in the Georgia statute (hereinafter "'Divisive Concepts' Policies"). First Am. Compl., ECF 026 ("Compl.") ¶¶ 20-22; Exs. 1, 2.

Plaintiffs in this case allege that, in 2023, the District removed a long-time elementary school teacher named Katherine Rinderle from her classroom and placed her on administrative leave pursuant to the District's "Divisive Concepts" Policies after she read to her fifth-grade gifted and talented students an award-winning picture book she purchased at the school's book fair about a child who struggles to

[2] The United States takes no position on the additional issues raised in Defendants' Motion to Dismiss that are not addressed in this Statement of Interest.

conform to sex stereotypes, including sex-based assumptions about talents, interests, and style of dress. Compl. ¶¶ 57, 70, 73, 94, 101; Ex. 3. According to the allegations in the Complaint, Rinderle previously raised concerns to the school's administration about bullying of LGBTQ and gender nonconforming students that the District had not addressed, Compl. ¶ 103, and she purchased the book in part because she believed it would curb those bullying behaviors, Compl. ¶ 68-71.

After placing Rinderle on leave, District investigators and administrators stated that "any references to gender nonconformity or LGBTQ topics in class would be considered 'divisive' or 'controversial'" under its "Divisive Concepts" Policies. Compl. ¶ 99. Rinderle objected, maintaining that the District's "post-hoc interpretation and unanticipated enforcement" of its "Divisive Concepts" Policies in this manner, and its failure to address known bullying and harassment of LGBTQ and gender nonconforming students, subjected those students to a discriminatory hostile educational environment. Compl. ¶¶ 100-103; 113-114; 271. The District then terminated her. Compl. ¶ 129.

Rinderle, along with other District educators and students, filed suit. In addition to alleging that the District's implementation of its "Divisive Concepts" Policies violated Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution, Rinderle claims that the District violated Title IX when it

retaliated against her for complaining of what she believed to be a hostile educational environment based on sex.

ARGUMENT

Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). In *Jackson v. Birmingham Board of Education*, the Supreme Court explained that "the text of Title IX prohibits a funding recipient from retaliating against a person who speaks out against sex discrimination, because such retaliation is intentional discrimination on the basis of sex." 544 U.S. at 178 (internal quotation marks omitted).

The Eleventh Circuit analyzes Title IX retaliation claims under the same framework used for retaliation claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), which requires the plaintiff to show "(1) that she engaged in statutorily protected expression; (2) that she suffered an adverse . . . action; and (3) that there is some causal relation between the two events." *Kocsis v. Fla. State Univ. Bd. of Tr.*, 788 F. App'x 680, 686 (11th Cir. 2019) (quoting *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1363 (11th Cir. 2007) (per curiam)); *see also, e.g.*, *Garrett v. Univ. of S. Fla. Bd. of Tr.*, 824 F. App'x 959, 966 (11th Cir. 2020) (reiterating use of Title VII framework for Title IX retaliation claim). "[T]o recover for retaliation,

the plaintiff 'need not prove the underlying claim of discrimination which led to her protest,' so long as she had a reasonable good faith belief that the discrimination existed." *Gupta v. Fla. Bd. of Regents*, 212 F.3d 571, 586 (11th Cir. 2000) (quoting *Meeks v. Comput. Assocs. Int'l*, 15 F.3d 1013, 1021 (11th Cir. 1994)).

The Complaint alleges that Plaintiff Rinderle engaged in statutorily protected activity under Title IX when she, among other things, opposed the District's interpretation and enforcement of its "Divisive Concepts" Policies and spoke out against what she believed to be a hostile educational environment based on sex for LGBTQ and gender nonconforming students. Compl. ¶¶ 103, 113, 271. In their Motion to Dismiss, Defendants argue that Rinderle cannot make this showing of statutorily protected activity because she "complained of nothing resembling an actionable hostile educational environment for students," and the subject matter of the "Divisive Concepts" Policies is exempt from Title IX under the Department of Education's regulations. Defs.' Mot. to Dismiss First Am. Compl. ("MTD"), ECF 041-1 at 4, 32-34.

Therefore, for purposes of Plaintiff Rinderle's Title IX retaliation claim, this Court must assess whether the Complaint plausibly alleges that she had a reasonable, good faith belief that a hostile environment based on sex existed for LGBTQ and gender nonconforming students. In so doing, this Court should consider the totality of the circumstances alleged, which includes not only the alleged sex-based bullying

and harassment of LGBTQ and gender nonconforming students (and the District's alleged indifference to it), but also—and contrary to Defendants' suggestion otherwise—the alleged effects of the District's interpretation and enforcement of the "Divisive Concepts" Policies on those students' educational environment.

I. In Assessing Whether it was Reasonable for the Plaintiff to Believe that a Hostile Educational Environment Based on Sex Existed, a Court Must Consider the Totality of the Circumstances.

Whether a hostile environment based on sex exists is a broad inquiry that requires consideration of the totality of the circumstances. The Supreme Court has long recognized in the context of private damages claims under Title IX that, whether sex-based conduct is sufficiently "severe, pervasive, and objectively offensive" so as to create a hostile educational environment "depends on a constellation of surrounding circumstances." *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 651 (1999) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81-82 (1998)). The inquiry therefore relies not just on specific acts in isolation, but on the cumulative nature of events and conditions permeating the educational environment and whether the environment as a whole "ha[s] the systemic effect of denying the victim equal access to an education program or activity." *Id.* at 652; *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1297-98 (11th Cir. 2007) (quoting the same language from *Davis*); *see also, e.g.*, *Sewell v. Monroe City Sch. Bd.*, 974 F.3d 577, 584-85 (5th Cir. 2020) (recognizing

that a Dean of Students' comments to the plaintiff "could be race-neutral or racially charged, depending on context," and holding that whether a hostile environment exists depends on the "cumulative effect" of acts, even those that on their own would not be actionable); *Hill v. Cundiff*, 797 F.3d 948, 972-73 (11th Cir. 2015) (considering the cumulative nature of multiple incidents of sexual harassment, as well as the school's "catch in the act policy," in determining that a hostile environment existed for the plaintiff).

When evaluating the totality of the circumstances, courts have also recognized that an atmosphere of hostility may contribute to the creation of a hostile educational environment. For instance, in finding plausible a student's allegation that her soccer coach's harassment created a hostile environment in violation of Title IX, the Fourth Circuit sitting en banc stated that "[e]vidence of a general atmosphere of hostility toward those of the plaintiff's gender is considered in the examination of all the circumstances." *Jennings v. Univ. of N.C.*, 482 F.3d 686, 696-98 (4th Cir. 2007) (en banc) (jury could reasonably find that two incidents of direct harassment of the plaintiff were "more abusive in light of the general, sexually charged environment" because "the incidents were not isolated events, but were part of an abusive pattern that instilled fear and dread."); *see also, e.g.*, *Feminist Majority Found. v. Hurley*, 911 F.3d 674, 692 (4th Cir. 2018) (individual incidents of threatening conduct on the basis of sex must be viewed against the "backdrop" of "a campus environment

purportedly conducive to sexual assault"); *cf. Burlington N. & Santa Fe. Ry. Co. v. White*, 548 U.S. 53, 69 (2006) ("Context matters. The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed." (internal quotations omitted)).

II. A School's Policies and Practices Are Part of the Totality of the Circumstances a Court Should Consider in Determining Whether it was Reasonable for the Plaintiff to Believe that a Hostile Educational Environment Existed.

In examining whether the totality of the circumstances supported a plaintiff's asserted reasonable belief that a hostile educational environment existed, a court should consider a school's policies and practices and their alleged impact on students. In *Silva v. St. Anne Catholic School*, 595 F. Supp. 2d 1171, 1186 (D. Kan. 2009), for example, the court considered whether, under Title VI,[3] a school district's English-only policy could be found to have created a hostile environment on the basis of race for Hispanic students. The student plaintiffs claimed that, because of this policy, they "(1) were watched more closely than other students; (2) were worried about being expelled for speaking Spanish; (3) were worried that other

[3] Title VI case law is instructive for evaluating hostile environment claims under Title IX. *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286, 290 (1998) (noting that Title IX was modeled after Title VI which is "parallel to Title IX except that it prohibits race discrimination, not sex discrimination, and applies in all programs receiving federal funds, not only in education programs").

students would report them for speaking Spanish; and (4) were not able to focus on their academics." *Id.* at 1186-87. The court found that, taken together, these claims created an issue of material fact as to whether a hostile environment existed. *Id.* at 1187; *see also, e.g.*, *Wood v. Fla. Dep't of Educ.*, No. 4:23-cv-00526, 2024 WL 3371319, at *2 (N.D. Fla. July 10, 2024) (order denying Defendants' motion to dismiss) (teacher plausibly alleged that school district's title/pronoun policies contributed to hostile work environment based on sex under Title VII); *T.V. v. Sacramento City Unified Sch. Dist.*, No. 2:15-CV-00889, 2016 WL 397604 at *5 (E.D. Cal. Feb. 2, 2016) (denying a school district's motion to dismiss Title VI claim because plaintiffs plausibly alleged a racially hostile environment based on several factors, including the school's GATE program, which incorrectly labeled Hispanic students as English as Second Language students, and other policies that segregated students on the basis of race and national origin).

Similarly, in *Maldonado v. City of Altus*, 433 F.3d 1294 (10th Cir. 2006), *overruled on other grounds as recognized in Metzler v. Fed. Home Loan Bank of Topeka*, 464 F.3d 1164, 1174 n.2 (10th Cir. 2006), the Tenth Circuit held that a genuine issue of material fact existed as to whether a municipality's English-only policy created a hostile work environment for its Hispanic employees in violation of Title VII. There, the court considered not just that the plaintiff employees experienced "ethnic taunting," but also that the workplace's English-only policy

made them "feel like second-class citizens." *Id.* at 1304. The court then concluded that the "policy itself, and not just the effect of the policy in evoking hostility by co-workers, may create or contribute to the hostility of the work environment. . . . [T]he very fact that the City would forbid Hispanics from using their preferred language could reasonably be construed as an expression of hostility to Hispanics." *Id.* at 1304-05; *see Montes v. Vail Clinic, Inc.*, 497 F.3d 1160, 1170 (10th Cir. 2007) ("English-only instructions indeed can, in certain circumstances, 'create[] a hostile atmosphere for Hispanics in their workplace' and thus violate Title VII" (quoting *Maldonado*, 433 F.3d at 1304)); *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1489 (9th Cir. 1993) (noting the possibility "that in some circumstances English-only rules can exacerbate existing tensions, or, when combined with other discriminatory behavior, contribute to an overall environment of discrimination" or that "such rules are enforced in such a draconian manner that the enforcement itself amounts to harassment. . . . [A] court must look to the totality of the circumstances in the particular factual context in which the claim arises"); *see also Adams v. City of New York*, 837 F. Supp. 2d 108, 125-26 (E.D.N.Y. 2011) (policy requiring employees to wait for a replacement employee to fill their post before using the restroom could contribute to a hostile work environment based on sex for women, who felt they could not relieve themselves without using a bathroom like their male counterparts).

It is therefore well-established that an employer's or school district's implementation of certain policies can contribute to a discriminatory hostile environment. Therefore, in the context of a Title IX retaliation claim, where the court is tasked only with evaluating whether a plaintiff *reasonably believed* that sex discrimination was occurring, it is proper for the court to consider—and at the motion to dismiss stage, to accept as true—allegations that the school district's implementation of particular policies contributed to a hostile environment based on sex.

III. Plaintiffs' Allegations Show How a School District's Implementation of Certain Policies Can Plausibly Contribute to a Hostile Environment for Students.

The allegations in Plaintiffs' Complaint detail how a school district's implementation of its policies can plausibly contribute to a hostile educational environment based on sex for a student or group of students.[4] Like the policies at

[4] The Complaint alleges (Compl. ¶¶ 159, 162) that an administrative complaint against the District involving some of the same facts as alleged in this Complaint was filed by a third party with the Department of Education's Office for Civil Rights (OCR). OCR does not publicly confirm whether it has received complaints. If, after an evaluation, OCR decides to open an investigation of a school based on a complaint, it notifies both the complainant and the school of that investigation and would only then publicly confirm the existence of the investigation. *See* U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual* § 109 (July 2022), https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf. If such an administrative complaint had been received and an investigation was opened, OCR would serve as a neutral factfinder and base its conclusions on facts found using the preponderance of the evidence standard, not mere allegations. *See id*. § 303; 34

issue in *Silva* and *Maldonado*, Plaintiffs' allegations describe with specificity the ways that the District's interpretation and enforcement of its "Divisive Concepts" Policies exacerbated sex-based bullying and harassment of LGBTQ and gender nonconforming students, increased those students' feelings of fear, isolation, and stigmatization, and impeded their access to the District's education program on the basis of sex.

As an initial matter, Defendants argue that Title IX does not protect Rinderle's alleged complaints of a hostile environment for LGBTQ and gender nonconforming students because some recent district court decisions—all postdating the allegations in this Complaint—have rejected the Department of Education's conclusion, as codified in its 2024 Title IX regulation, that Title IX's prohibition on discrimination on the basis of "sex" necessarily protects students from discrimination on the basis of sexual orientation and gender identity. MTD at 30-32. So, Defendants argue, it was not "objectively reasonable" for Rinderle to believe, at the time she spoke out, that harassment of LGBTQ and gender nonconforming students violated Title IX. *Id*.

C.F.R. § 100.7(c) & (d)(1) (describing OCR's investigations). The United States' reliance on the allegations in the Complaint in this Statement of Interest does not reflect any position on the accuracy of Plaintiffs' allegations or bear on which enforcement steps OCR would take.

This argument is baseless. At the time of the allegations in this Complaint, the Federal government and three courts of appeals had concluded that, following the Supreme Court's decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), Title IX *does* protect students from harassment and other forms of discrimination on the basis of sexual orientation and gender identity, *see, e.g.*, *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020); *A.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 769 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 683 (2024); *Grabowski v. Arizona Bd. of Regents*, 69 F.4th 1110, 1116 (9th Cir. 2023), and none had come to a different conclusion.[5]

It would therefore have been *reasonable* for Rinderle to believe the same at the time she complained of a sex-based hostile environment for LGBTQ and gender

[5] In particular, the Eleventh Circuit's decision in *Adams v. School Board of St. John's County*, 57 F. 4th 791 (11th Cir. 2022) (en banc), did not address whether *Bostock*'s reasoning applies to Title IX's prohibition of discrimination on the basis of sex, nor did it hold that harassment on the basis of sexual orientation or gender identity falls outside Title IX. Rather, the *Adams* court concluded that statutory and regulatory "carve-outs" allowed the school district to exclude transgender students from school bathrooms consistent with their gender identity. *Id.* at 809, 811-14 (stating that whether discrimination based on sexual orientation or transgender status necessarily entails discrimination based on sex "is not in question in this appeal" and concluding instead that the bathroom policy "fits into Title IX's carve-out"); *see also* Mem. Op. & Order at 43-44, *Alabama v. Cardona*, No. 7:24-cv-00533-ACA (N.D. Ala. July 30, 2024), ECF No. 58 (administrative injunction issued pending appeal) (finding that *Adams* did not address whether, under Title IX, sex discrimination includes discrimination based on sexual orientation or transgender status, and rejecting plaintiffs' argument that it was unreasonable for the Department of Education to conclude that Title IX does cover discrimination on these bases).

nonconforming students. That subsequent district court opinions have reached divergent conclusions does not change this. Indeed, unlike cases where there is "binding precedent squarely hold[ing] that particular conduct" is not covered by the statute, *cf. Butler v. Ala. Dept. of Transp.*, 536 F.3d 1209, 1214 (11th Cir. 2008) (involving a Title VII claim), in this case, the law is "in flux," *cf. Kaplan v. Burrows*, No. 6:10-cv-95-Orl-35DAB, 2011 WL 13298585, at *6 (M.D. Fla. Mar. 8, 2011) ("A complainant can be wrong in his assertion of an FLSA violation but still raise an objectively reasonable complaint, particularly where the claim at issue is suffused with uncertainty because the state of the law is in flux or because the factual peculiarities surrounding the case pose a novel legal question[.]"). Moreover, the Complaint alleges that the hostile environment for LGBTQ and gender nonconforming students stemmed from their nonconformance with traditional sex stereotypes, a well-established basis for demonstrating that conduct was "based on sex." *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-52 (1989).

The still-open question of whether and how *Bostock's* reasoning applies to Title IX therefore does not determine the outcome of this Plaintiff's Title IX retaliation claim, where the relevant legal question is only whether the Complaint plausibly alleges facts to show that, at the time Rinderle spoke out, it was "reasonable" for her to believe that LGBTQ and gender nonconforming students in the District were experiencing a hostile educational environment based on sex in

violation of Title IX. And the Complaint contains detailed allegations supporting this belief.

First, the Complaint alleges that students experienced widespread and ongoing sex-based bullying and harassment because they were LGBTQ or gender nonconforming (i.e., because their gender identity, expression, or sexual orientation do not conform to traditional sex stereotypes), Compl. ¶ 220, which District employees either knowingly ignored or failed to address adequately. Specifically, the Complaint alleges that "students openly use anti-LGBTQ slurs in school," Compl. ¶ 58, that LGBTQ and gender nonconforming students were subjected to "slurs, derogatory language, and isolation," in all areas of the school, Compl. ¶ 86, and that these students were otherwise subjected to bullying because they were "perceived as violating traditional sex stereotypes," Compl. ¶ 87 (describing teacher's uncertainty about being disciplined for addressing "the bullying of students who wear clothes perceived as violating traditional sex stereotypes"). *See also, e.g.*, Compl. ¶¶ 157, 196. The Complaint alleges that these conditions were widespread and known to administrators, who did not address the conduct. Compl. ¶ 125 (speaker at Board hearing described "widespread bullying of LGBTQ and gender nonconforming students"); Compl. ¶ 103 (alleging that, both before and after her suspension, Rinderle raised concerns about bullying and harassment of LGBTQ students to the school's administration that it failed to address); Compl. ¶ 57

(describing Rinderle's concern that the District was not addressing the issues underlying the bullying of gender nonconforming children). Courts have recognized that these allegations alone may be sufficient to support a hostile environment claim under Title IX. *See, e.g.*, *Cianciotto ex rel. D.S. v. N.Y.C. Dep't of Educ.*, 600 F. Supp. 3d 434, 440 (S.D.N.Y. 2022) (parents sufficiently alleged a Title IX claim based on student-on-student harassment after their son was openly mocked, taunted, and harassed on the basis of his sexual orientation and gender expression); *Spruill v. Sch. Dist. of Phila.*, 569 F. Supp. 3d 253 (E.D. Pa. 2021) (allegations that student was called anti-LGBTQ slurs amounted to the harassment on the basis of sex required to state a Title IX hostile environment claim).

The Complaint goes on to allege, however, that the District's interpretation and enforcement of its "Divisive Concepts" Policies heightened the sex-based hostile environment these students experienced. Critically, the Complaint alleges that the District's interpretation and enforcement of the "Divisive Concepts" Policies to prohibit "any reference to gender nonconformity or LGBTQ topics in class," Compl. ¶ 99, deterred educators from intervening to address the ongoing harassment of LGBTQ and gender nonconforming students. Compl. ¶¶ 86, 87 (as a result of the District's enforcement of the "Divisive Concepts" Policies, teachers now "hesitate to advocate for these students or intervene to prevent bullying and harassment" and "are uncertain whether they would be disciplined for addressing the bullying of

students who wear clothes perceived as violating traditional sex stereotypes"); Compl. ¶ 215 (District's enforcement of the "Divisive Concepts" Policies has chilled educators from "effectively addressing anti-LGBTQ harassment"); Compl. ¶ 233 (but for the "Divisive Concepts" Policies, educators would provide safer and more inclusive environments for gender nonconforming students). As a result, the Complaint alleges, LGBTQ and gender nonconforming students experienced more harassment and more fear for their safety at school. Compl. ¶ 238 (LGBTQ and gender nonconforming students are "experiencing more harassment and bullying and less support from their teachers . . . and increased feelings of unsafety and unwelcomeness at school").

Like the Hispanic students in *Silva* who alleged that their school's English-only policy made them fearful of targeting by their peers and unable to focus on their academics, *Silva*, 595 F. Supp. 2d at 1187, Plaintiffs here too allege such fear and impediment to LGBTQ and gender nonconforming students' ability to focus at school. Compl. ¶ 157 (lack of support and protection for LGBTQ and gender nonconforming students "harms their motivation, focus, and engagement in school"); Compl. ¶ 238 (harassment, bullying, and feelings of unsafety for LGBTQ and gender nonconforming students are "harming their motivation and ability to focus on learning").

Plaintiffs also allege that, for LGBTQ and gender nonconforming students, the District's interpretation and enforcement of the "Divisive Concepts" Policies to prohibit any references to gender nonconformity or LGBTQ topics in class "sen[t] the officially sanctioned message that there is something wrong with them" and that "their nonconformity with gender stereotypes, their gender identities, gender expression, and/or sexual orientation are so 'controversial,' 'politically divisive,' and 'age-inappropriate' that they must be censored entirely from [the District's] pedagogy and curriculum." Compl. ¶ 221. Indeed, Plaintiffs allege that the District Superintendent himself, on more than one occasion, justified the removal of LGBTQ-themed books from the District's schools and libraries by saying that the "situation is about . . . good and evil." Compl. ¶ 146.

As in *Maldonado*, where the court found that an employer's English-only policy "could reasonably be construed as an expression of hostility to Hispanics" that made them "feel like second-class citizens," 433 F.3d at 1304, Plaintiffs here plausibly allege that the District's interpretation and enforcement of its "Divisive Concepts" Policies to prohibit teachers from providing students "access to information that violates traditional sex stereotypes," Compl. ¶ 244, conveys the message "that LGBTQ and gender nonconforming students are unwelcome and shameful" and "disapproved of" by their school because of their gender nonconformance, Compl. ¶¶ 150, 157. *See also* Compl. ¶¶ 158, 161, 220. And

Plaintiffs further allege that these actions by the District caused these students to experience more fear and isolation and further impeded their access to the District's educational program on the basis of sex. Compl. ¶ 157 ("this stigmatization and lack of support harms their motivation, focus, and engagement in school"); Compl. ¶ 159 ("Defendants' targeting of LGBTQ books and content has magnified the fears of LGBTQ students"); Compl. ¶ 160 (speaker at Board hearing said "[the District's] censorship of inclusive books has created more fear and concerns in LGBTQ students over safety and hostile learning environments"); Compl. ¶ 162 ("Defendants' public anti-LGBTQ hostility makes students feel unsafe").

In sum, the Complaint alleges that the District ignored or failed to adequately address ongoing sex-based bullying and harassment of LGBTQ and gender nonconforming students; that the District's enforcement of its "Divisive Concepts" Policies exacerbated this bullying and harassment by, among other things, deterring educators from intervening to address it; that the District's "post-hoc interpretation" of the "Divisive Concepts" Polices to bar classroom discussion of topics related to sex stereotypes and gender nonconformity sent a message of inferiority and stigma to LGBTQ and gender nonconforming students; and that together, these actions by the District rendered these students more vulnerable to increased sex-based harassment and caused them to experience greater fear, stigma, and isolation that impeded their ability to focus in school and access their education. Taken as true,

the allegations in this Complaint therefore provide, in detail, the basis for Rinderle's reasonable belief that the District's implementation of its "Divisive Concepts" Policies were contributing to a hostile educational environment for students on the basis of sex.

In their Motion to Dismiss, Defendants assert that "under 34 C.F.R. § 106.42, [the District's] curriculum polices (including what employees can and cannot teach) fall beyond Title IX's reach," implying that this Court may not consider the District's "Divisive Concepts" Policies as part of its analysis under Title IX of whether Rinderle alleged a reasonable, good faith belief that students were experiencing a hostile environment based on sex. MTD at 17-18, 32. That is not correct for two reasons.

First, that regulatory provision, to the extent relevant at all, only governs the interpretation of the Department's other Title IX regulations. Section 34 C.F.R. § 106.42 states that the Department of Education's Title IX regulations cannot be interpreted as "requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials." It does not purport to instruct a court about how to interpret Title IX's statutory prohibition on sex discrimination under a recipient's education program or activity, which is defined by statute to mean "all of the operations of" a school district. 20 U.S.C. § 1687(2)(B). Second, 34 C.F.R. § 106.42 does not prohibit the Department from considering whether school *policies*, even

those that may implicate curriculum, contribute to a hostile environment or otherwise discriminate on the basis of sex.

Rather, as discussed above, under both judicial authority and the Department of Education's approach, whether a hostile environment based on sex exists under Title IX "depends on a constellation of surrounding circumstances." *Davis*, 526 U.S. at 651 (quoting *Oncale*, 523 U.S. at 81-82). And school policies, like the "Divisive Concepts" Policies here, are undoubtedly part of that context. As such, school districts cannot ask the court to absolve them of their Title IX obligations by insulating from the court's consideration those policies that permeate students' and employees' experience in school and which an employee or student could reasonably and in good faith believe contribute to a hostile environment based on sex.

This Court should therefore not hesitate to consider the alleged impact of the District's "Divisive Concepts" Policies when assessing, for purposes of Rinderle's Title IX retaliation claim, whether the facts alleged are sufficient to show her reasonable, good faith belief that a hostile environment based on sex existed for District students.

CONCLUSION

Title IX protects from retaliation individuals who speak out against what they reasonably and in good faith believe to be a hostile educational environment based on sex. Without such protection, sex discrimination would go unremedied and

harassment would continue. Relevant case law instructs that a determination of whether a hostile environment based on sex exists under Title IX requires consideration of the totality of the circumstances, including the effects of school policies and practices on students. Therefore, in assessing for purposes of Rinderle's Title IX retaliation claim whether the Complaint plausibly alleges that she reasonably and in good faith believed that a hostile environment based on sex existed for LGBTQ and gender nonconforming students, this Court should consider, as part of the totality of the circumstances, the alleged effects of the District's interpretation and enforcement of its "Divisive Concepts" Policies.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KATHERINE RINDERLE et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 1:24-cv-00656-JPB
COBB COUNTY SCHOOL DISTRICT et al.,	)	
Defendants.	)	

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rule 7.1D, that the foregoing motion has been prepared using Times New Roman, 14-point font, which is one of the font and point selections approved by the Court in Local Rule 5.1(B).

August 19, 2024.

/s/ Laura C. Tayloe
LAURA C. TAYLOE

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2024, I electronically filed this motion and accompanying papers with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

/s/ Laura C. Tayloe
LAURA C. TAYLOE