

REGULATION

Hamilton Township – Mercer County School District

Section: Community
9130. PUBLIC COMPLAINTS AND GRIEVANCES
Date Created: July 2008
Date Edited: July 2008

9130. PUBLIC COMPLAINTS AND GRIEVANCES

All complaints and grievances addressed to the Board of Education, Board members individually, school officials, or district staff members shall be referred to the Superintendent for consideration in accordance with the following procedures.

A. Complaints Regarding a Teaching Staff Member Other Than Administrator

1. First level

- a. The complainant will be directed to address the matter to the staff member.
- b. The staff member will be directed to discuss the matter directly with the complainant and to make every reasonable effort to explain the difficulty and/or take appropriate action in accordance with district regulations and within his/her authority and district regulations.
- c. The staff member will report the matter, and whatever action may have been taken to resolve the matter, to the Principal.

2. Second level

- a. If the matter cannot be satisfactorily resolved at the first level, the complainant may discuss the matter with the Principal.
- b. The Principal will take all reasonable and prudent steps to resolve the complaint or to explain to the complainant why the matter cannot be resolved as the complainant wishes.

3. Third level

- a. If the matter cannot be satisfactorily resolved at the second level, the complainant may, within three working days (see Policy No. 9130) of his/her meeting with the Principal, submit to the Director/Superintendent a written request for a conference. The request shall include:
 - (1) The specific nature of the complaint and a brief statement of the facts giving rise to it, and
 - (2) The respect in which it is alleged that the complainant or the complainant's child has been unfairly treated or adversely affected, and
 - (3) The remedy sought by the complainant.
- b. A copy of the request for conference will be sent to the Board of Education.
- c. Within ten working days (see Policy No. 9130) of the receipt of the request, the Superintendent shall conduct a conference, at a time convenient to the complainant, and attempt to resolve the matter informally. The time for conference will be extended if the complainant is unable to schedule a convenient meeting.
- d. The Superintendent shall record in writing his/her disposition of the complaint and shall, within ten working days (see Policy No. 9130) of the conference, provide a copy of the written disposition to the complainant and to the Board.

4. Fourth level

- a. A complaint that is not resolved by conference with the Superintendent or that seeks a remedy beyond the Superintendent's jurisdiction may be appealed to the Board of Education.
- b. The complainant may, within three working days (see Policy No. 9130) of his/her receipt of the Superintendent's written disposition, submit a written request for a hearing before the Board. The request will include a copy of the Superintendent's disposition at Level 3.
- c. The Board shall, within forty-five calendar days (see Policy No. 9130) of the receipt of the request, conduct an informal hearing before a committee of Board members, in which the complainant will present his/her complaint. The Board may, on the petition of the complainant, permit the examination of witnesses. The Board may permit the teaching staff member complained of to testify in his/her own behalf.
- d. The Board shall, within ten calendar days (see Policy No. 9130) of the hearing, advise the complainant in writing of the Board's disposition of the complaint.
- e. The complainant will be advised that the Board's decision may be appealed to the Commissioner of Education.

5. Reasonable efforts will be made to expedite a complaint that arises at the end of the school year so that the matter can be resolved before the interruption of summer vacations.

B. Complaints About an Administrative Staff Member

1. The procedure set forth in paragraph A will be followed and the complainant will be directed to discuss the matter first with the administrator.
2. A complaint about a Principal or a central office administrator will omit the second level of the complaint procedure. Appeal of the first level discussion will be made directly to the Superintendent in accordance with paragraph A3.

C. Complaints About a Support Staff Member

1. The procedure set forth in paragraph A will be followed and the complainant will be directed to discuss the matter first with the support staff member.
2. Appeal at the second level of the complaint procedure will be to the support staff member's supervisor.
3. A complaint about a support staff supervisor will omit the second level of the complaint procedure. Appeal of the first level discussion will be made directly to the Superintendent in accordance with paragraph A3.

D. Complaints About a Program, Practice, or Operation

1. A complaint directed to a matter of district or school policy, procedure, program, or operation, including entitlement programs established by state or federal law, should be addressed, initially, to the administrator or department head most directly concerned with the matter, in accordance with paragraph A1.
2. A complaint that cannot be satisfactorily resolved at the first level may be appealed to the Superintendent and, thereafter, the Board in accordance with the procedures set forth in paragraph A3 and paragraph A4.

E. Complaints About Instructional and Resource materials

1. Complaints about textbooks, library books, reference works, and other instructional materials used in the district will be made in writing and submitted to the Superintendent.
2. The complainant will complete and sign a complaint form available in the Principal's office. The form will include:
 - a. The title, author, and publisher of the work complained of,
 - b. The specific portions or language complained of (by page and item),
 - c. The complainant's familiarity with the work objected to,
 - d. The reasons for the objection,
 - e. The pupils or class for whom the work is intended, and
 - f. The way in which the work is used.
3. Within seven working days of the receipt of the complaint form, the Superintendent shall appoint a review committee consisting of:
 - a. The head of the department in which the work is being used,
 - b. A teacher in the subject area of the work,
 - c. A library staff member,
 - d. A Board member,
 - e. A lay person knowledgeable in the area of the work, and
 - f. The Principal of a school in which the work is used.
4. The review committee will meet to evaluate the complaint and review the material objected to. The standards used by the committee will be those set forth in Policy No. 2530.
5. The committee will report its findings and recommendations to the Board.
6. The Board will receive the report of the committee. If the Board acts to remove the work complained of or to limit access to the work, its action will be accompanied by a statement of reasons for the removal or limitation.
7. A copy of the committee's report and the Board's action, if any, will be given to the complainant.
8. The complainant will be informed that a decision of the Board may be appealed to the Commissioner of Education.

Issued: 23 July 2008

Report of the Reconsideration Committee
Submitted May 5, 2023

Reconsidered item

Gender Queer: A Memoir, Maia Kobabe, Oni Press/Simon & Schuster, 2019.

Committee membership

In accordance with HTSD Board Regulation 9130 (See Appendix A), the committee consisted of:

- The head of the department in which the work is being used,
- A teacher in the subject area of the work,
- A library staff member,
- A Board member,
- A lay person knowledgeable in the area of the work, and
- The Principal of a school in which the work is used.

Member category	Member name & affiliation	Qualifications
Curriculum Supervisor	Francesca Miraglia	Supervisor of Secondary ELA and Social Studies; past supervisor of Secondary Librarians
Teacher	Kristen Mains, HHW	ELA teacher
Librarian	Renee Rogers, East	School Library Media Specialist, Master of Library Information Science, Master of Public Health
Board of Education member	Christina Harvey	Current HTSD Board of Education member and attorney
Community member	Ravi D'Elia	Former HTSD student and Hamilton resident
Building Principal	Frank Ragazzo, NHS	Principal - Nottingham High School

Committee Charge

In accordance with Policy and Regulation 9130 (See Appendix A), the committee was directed to:

- Review the complaints (See Appendix B).
- Review the material objected to (i.e., the book).
- Review all policies and regulations numbers 2530 and 9130 to guide the process.
- Use Policy No. 2530 as the standard for review.
- Establish and hold meeting(s), based on need, to come to a recommendation.
- Create and issue a report with recommendations to the Board of Education.

Guidelines

In compliance with HTSD Policy 2530 and Policy 9130, the committee adhered to the following in developing its recommendations:

- Review the challenged materials against the standards for the selection of library materials established by District Policy 2530.
- Review the work as a whole.
- Keep the work on the shelf and available for circulation during the review process.
- No challenged material can be removed solely because it represents ideas that may be unpopular.

Process

Each member read the book in its entirety, and reviewed the submitted letters of complaint. Committee members evaluated the book relative to the selection criteria in Policy 2530. In addition, the district's mission and goals, state instructional standards, and professional review sources were consulted. Committee discussions centered on these criteria, in considering the book as a literary work/resource for voluntary reading inquiry, as it is not required material in the curriculum.

Meetings were held on:

January 11, 2023, 5:30 pm, virtual meeting, all members in attendance.

January 24, 2023, 4:00 pm, virtual meeting, all members in attendance.

March 7, 2023, 5:30 pm, virtual meeting, five members in attendance.

March 28, 2023, 5:00 pm, virtual meeting, four members in attendance

May 2, 2023, 4:00 pm, virtual meeting with HTSD Board Attorney, five members in attendance

The committee fully considered the complainant's concerns within the context of HTSD Policies 2530 and 9130 in developing the following recommendation.

Recommendation

The committee, by majority decision, recommends that *Gender Queer* remain in the HTSD high school library collection, based on the following:

1. The selection and purchase of *Gender Queer* meets all of the criteria set forth in Board Policy 2530 - Resource Materials, and falls within the professional discretion of our certified school librarians, who are trained to purchase appropriate materials to support the personal and academic growth of our students.
2. *Gender Queer's* literary and artistic message overrides any of the complainant's objections to limited portions of the book. The First Amendment is a hallmark of students' learning experiences. Board Policy 9130 and United States case law require that challenged books be considered as a whole.
3. The committee found that the challenged content in *Gender Queer* does not meet the definition of "obscenity" or the complaints' charges of "pornography" or "adult content, pornography, depictions of pedophilia, sexual situations and vulgarity that is harmful to

children,” especially when considered in context of the entire work, as required by current case law (i.e., “The Miller Test”). The committee also holds, that in following the HTSD policies cited, a resource material not serving the maturation of *some* students is not a valid basis to remove access to the material for *all* students.

4. *Gender Queer* and other books highlighting the experiences of LGBTQIA authors and characters provide invaluable resources to our most vulnerable LGBTQIA students and their peers, fostering understanding, empathy, and acceptance, and support State-mandated curriculum regarding diversity and gender identity, including under N.J. Stat. Ann. 18A:35-4.35.

Supporting evidence

HTSD Policy 2530 - Resource Materials

Committee members provided the following evidence for the book’s ability to meet the standards for resource materials established in Policy 2530.

“ 1. Material will be suited to the varied interests, abilities, reading levels, and maturation levels of the pupils to be served”

Interests/Abilities:

Committee members noted the LGBTQIA representation and inclusion in this book is important for our LGBTQIA students and their peers, providing “mirrors, windows, and sliding glass doors” (Bishop) into the author’s experience of gender confusion/dysphoria, sexuality and gender identity. The memoir addresses social conflict and examples of positive social, school, and family support throughout the author’s personal journey.

Reading levels:

Graphic novels are popular in our school libraries, and increase accessibility of information and stories across reading levels.

Maturation levels:

Professional reviews cite age ranges of grades 9 and up (Dar et al., “Gender Queer: A Memoir” 69, Frencham 60), grades 9-12 (Rice), grade 11 and up (Alverson 47), and “mature teens” (“Gender Queer” 66-67). *Gender Queer* has won multiple awards, and appears on numerous lists of books for teens, young adults, and high school students.

“2. Wherever possible, materials will provide major opposing views on controversial issues so that pupils may develop under guidance the practice of critical reading and thinking”

The novel provides a personal, first-person narrative within a current controversial issue: gender-nonconformity/transition in young adults. The book presents a viewpoint that is often silenced or missing. This author’s experiences contradict the assumption that heteronormativity is the ‘correct’ or ‘default’ sexual orientation. The author’s experience and information is presented in a frank, straightforward style, without grandstanding. *Gender Queer* provides students with a means to expand critical thinking and understanding of others.

The insights and experiences shared by the author can help readers build empathy, understanding, and acceptance of questioning- and gender non-conforming peers and other individuals. This empathy, understanding, and acceptance can be essential to the well-being of our most at-risk students who are transgender or nonbinary. According to a peer-reviewed study conducted by the Trevor project, “TGNB youth who reported gender identity acceptance from at least one peer had 34% lower odds of reporting a past-year suicide attempt” (Weaver).

“3. Wherever possible, materials will represent the many religious, ethnic, and cultural groups and their contribution to American heritage”

LGBTQ+ persons comprise an estimated 8% of the United States population. These individuals often have shared interests, beliefs, customs, art, means of expression, and are commonly collectively referred to as “the LGBTQ community,” and, thus, can be considered as a “cultural group.” The author’s experience and identity within the LGBTQIA community are underrepresented in American literature.

The representation and positive outcome of the author’s journey in *Gender Queer* is important, and has the potential to be life-changing for our most vulnerable students. Statistics from the Trevor Project’s 2022 National Survey on LGBTQ Youth Mental Health show that more than half (53%) of transgender and non-binary youth have “seriously considered suicide in the past year,” and that almost one in five (19%) transgender and non-binary youth report an attempt at suicide in the past year (2022 National 6).

Throughout the book, textual and visual references are made to LGBTQIA contributions and representation in art, literature, leaders, and athletes. The book itself has been recognized on numerous lists and by national awards for its literary and artistic merits, and therefore, its “contribution to American Heritage.”

“4. Materials will be factually accurate and of genuine literary or artistic value”

This nonfiction memoir meets both criteria of being “factually accurate” and having “genuine literary or artistic value.” *Gender Queer* was reviewed and recommended by the Journal of American Medicine (JAMA) as a “valuable opportunity” for “health professionals” to “understand the experiences of patients,” which speaks to its factual accuracy and scientific value (Green 2369).

Gender Queer has been recognized and awarded as a work of literature for young adults by local, state, and national organizations, including receiving a Stonewall Award as an “work of exceptional merit relating to the LGBTQ experience” (“How We Fight”). The book as a whole has literary value in bringing awareness and understanding to an under-represented person’s journey toward self-awareness and understanding of gender. This memoir has artistic value in the way the author is able to weave the trials and tribulations of coming to terms with their sexuality and gender identity, without being overly graphic or gratuitous, or sensationalizing their experiences. (See also the state and national awards and recommended reading lists in Appendix C.)

“5. Materials will be of a quality and durability appropriate to their intended uses and longevity”

The book's physical paperback format is less durable than a hardcover book, but is typical for graphic novels, and consistent with many other books in our school libraries. A hardcover version is now also available.

“6. Materials will relate to, support, and enrich the courses of study adopted by the Board”

Gender Queer is not a required course text; however, *Gender Queer*, as a resource material in the high school library, supports numerous state standards, statutes, and initiatives, as well as the HTSD mission, vision, objectives, and strategic planning goals, as detailed below.

HTSD's 2021 Secondary Library Curriculum Guide states the following in its Vision Statement:

- The American Association of School Librarians' AASL Standards Framework for Learners are based on common beliefs among school librarians. Among the common beliefs expressed in the AASL standards document are: ... Intellectual freedom is every learner's right.
- The Hamilton Township School District's librarians share these beliefs and strive to positively impact student achievement. The HTSD library program's many goals include fostering critical thinking skills ... promoting intellectual freedom and providing access to a diverse collection of reading materials that support the district's mission and goals.
- The school library provides a safe, nurturing, and inclusive environment; librarians support all students as well as staff.

District philosophy, mission, and goals

Diverse and inclusive literature, including the award-winning graphic memoir *Gender Queer*, in our high school libraries not only meet the district requirements under Policy 2530 - Resource Materials (see above), but student access to such literature is essential to meeting criteria set forth in HTSD's [philosophy](#), [mission](#), [goals](#), and [strategic plan](#).

Specifically, HTSD's [philosophy](#) and [mission](#) require that the Board provide a school program and materials “relevant to a changing society,” that prepare students “to protect, to live in, and to contribute to democracy,” and “graduate...with the attitudinal skills...necessary to become successful citizens in the world of tomorrow.” The insight and perspective of marginalized individuals, such as that represented in the memoir *Gender Queer*, can give students windows into our changing society, and prepare them to consider diverse viewpoints in our democracy. Further, such literature supports HTSD's philosophy of developing students who are “well-rounded individuals ... able to cope with the complex problems of society,” and who “demonstrate ethical, responsible and caring behavior,” by building understanding and empathy toward others through reading.

Diverse and inclusive literature, including *Gender Queer*, also support HTSD's [goals](#) of helping every pupil:

- To obtain information which will lead to active, informed citizenship ([District Policy 2132](#), Educational Outcome Goal 3)
- To understand and respect the rights of others and to develop the ability to get along with others regardless of race, creed, color, national origin, ancestry, age, marital status, or sex of any individual ([District Policy 2132](#), Educational Outcome Goal 5)

- To explore the ability and desire to express oneself creatively in one or more of the arts, and to understand the artistic expressions of other people ([District Policy 2132](#), Educational Outcome Goal 8)
- To develop an understanding and awareness of ethical principles and values and be able to apply them to one's own life ([District Policy 2132](#), Educational Outcome Goal 9)
- To develop an understanding of one's own worth, potential, and abilities ([District Policy 2132](#), Educational Outcome Goal 10) - this is especially true for our students who are exploring or struggling with their sexuality and/or gender identity.

Finally, providing access to diverse and inclusive literature, including *Gender Queer*, supports the following HTSD [strategic planning](#) goals:

- HTSD will develop a best in class, district wide K-12 character education program with real life application...that incorporates *social and emotional learning, brain development, mental health education, diversity, and inclusion in order to develop the whole child and emphasize the importance of empathy, equity, and compassion within our schools, communities and beyond.* ([Culture & Climate Goal #2](#), emphasis added)
- Hamilton Township School District will ensure *equitable access to resources and opportunities that meet the needs of all students, families, and staff to support the development of student academic success and social-emotional wellness.* ([Student Academic Success & Social/Emotional Wellness Goal #2](#), emphasis added)
- Increase the retention rate of faculty and staff by *creating a more inclusive culture and climate* in all school district instructionally focused buildings. ([Faculty & Staff Success Goal #2](#), emphasis added)

State instructional regulations

The availability of diverse and inclusive literature, such as *Gender Queer*, in our schools supports HTSD's compliance with the NJ Student Learning Standards, NJ Quality Single Accountability Continuum (NJQSAC), and the following state statutes, regulations, and standards:

- [Diversity and Inclusion](#) (2021) N.J. Stat. § 18A:35-4.36 "...highlight and promote diversity, including economic diversity, equity, inclusion, tolerance, and belonging in connection with gender and sexual orientation, race and ethnicity, disabilities and religious tolerance; examine the impact that unconscious bias and economic disparities have at both an individual level and on society as a whole; and encourage safe, welcoming, and inclusive environments for all students regardless of race or ethnicity, sexual and gender identities, mental and physical disabilities, and religious beliefs." (emphasis added)
- [History of disabled and LGBTQ persons](#) (2019) N.J. Stat. § 18A:35-4.35: "A board of education shall include instruction on the political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people, in an appropriate place in the curriculum of middle school and high school students as part of the district's implementation of the New Jersey Student Learning Standards."

- [NJ Social & Emotional Learning Competencies](#) (2017): State standards outline expectations according to five competencies: self-awareness, self-management, social awareness, responsible decision-making, relationship skills. The social awareness competencies include “*Recognize and identify the thoughts, feelings, and perspectives of others; Demonstrate an awareness of the differences among individuals, groups, and others’ cultural backgrounds; Demonstrate an understanding of the need for mutual respect when viewpoints differ, [and] Demonstrate an awareness of the expectations for social interactions in a variety of settings.*” (emphasis added)
- [Age-Appropriate Instruction Relative to Consent](#) (2019) N.J.Stat. § 18A:35-4.38: Requires age-appropriate instruction in grades six through 12 on the law and meaning of consent for physical contact and sexual activity as part of the district’s implementation of the New Jersey Student Learning Standards in Comprehensive Health and Physical Education. The instruction shall be designed to increase discussion and awareness that consent is required before physical contact or sexual activity, as well as the social, emotional, and relational impact surrounding sexuality, the right to say no to unwanted physical contact or sexual activity, and the virtues of respecting the right of others to say no.
- [NJ Student Learning Standards for Comprehensive Health and Physical Education](#) (2020): Specifically, *Gender Queer*, supports the following standards required under 2.1 Personal and Mental Health, Social and Sexual Health (2.1.12.SSH):
 - 2.1.12.SSH.1: Analyze the influences of peers, family, media, social norms and culture on the expression of gender, sexual orientation, and identity.
 - 2.1.12.SSH.2: Advocate for school and community policies and programs that promote dignity and respect for people of all genders, gender expressions, gender identities, and sexual orientations.
 - 2.1.12.SSH.3: Analyze current social issues affecting perceptions of sexuality, culture, ethnicity, disability status and make recommendations to address those issues.
 - 2.1.12.SSH.5: Demonstrate ways to show respect for the boundaries of others as they relate to intimacy and sexual behavior.
- [NJ Student Learning Standards for Comprehensive Health and Physical Education](#) (2014): Specifically, *Gender Queer*, supports the following content statement required under Strand B from the 2.4 Human Relationships and Sexuality Standard:
 - Content Standard: Discussion of topics regarding sexuality requires a safe, supportive environment where sensitivity and respect is shown toward all.
 - 2.4.12.B.4 Compare and contrast attitudes and beliefs about gender identity, sexual orientation, and gender equity across cultures.

*The 2014 and 2020 New Jersey Student Learning Standards for Comprehensive Health and Physical Education include standards surrounding sexual education and relationships (healthy / unhealthy / marriage / partnership). This book explores this from a queer perspective. Additionally, the relationships in this memoir are presented as healthy and safe environments to explore and discover the author’s true identity/sexual preferences/gender identity.

Response to the Complaints

At the time of the complaints, one copy of *Gender Queer* was, and remains, available for circulation in print format in the library at Nottingham High School. Each member of the Committee secured a copy of the book, and read the work in its entirety. In response to the complaints, and in accordance with HTSD Policy 9130, the committee reviewed all text and images in question in the context of the entire work, and researched the complainants' claims that the "material is pornography and must not be accessible to minors" and "is not suitable for the maturation level of the children it is available to and contains adult content, pornography, depiction of pedophilia, sexual situations and vulgarity that is harmful to children."

According to Cornell Law School's Legal Information Center, current case law (i.e., "The Miller Test") regarding obscenity uses a three-pronged standard to evaluate works:

"(1) whether 'the average person, applying contemporary community standards' would find that the work, 'taken as a whole,' appeals to 'prurient interest' (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (3) whether the work, 'taken as a whole,' lacks serious literary, artistic, political, or scientific value" (Esmaili).

The committee holds that the images and passages in question are not presented for the purpose of sexual gratification, especially when viewed in the context of surrounding panels/pages and the work as a whole. Instead, the panels in question tell the author's story in a frank, honest manner. None of the images in question involve children, one panel references classical Greek art and literature, and the other panels are set in positive contexts of personal development, consent and communication between partners.

Gender Queer is published by the award-winning comic book and graphic novels publisher, Oni Press, and distributed by the award-winning publishing house, Simon & Schuster. Neither company markets or sells the title as "pornography." Further, multiple awards, professional review sources, and reading lists confirm that the work has literary, artistic, and scientific value, and is appropriate for young adults of high school age.

The committee acknowledged that, taken out of context, the age-appropriateness of several images or panels in the book could be called into question. One committee member questioned if any of the images would be blocked or flagged for review by HTSD's monitoring software for student laptops. HTSD's Technology Department clarified that simply taking a picture from the book would not flag the system. Moreover, news websites that have images of the book were not flagged by the monitoring software.

Based upon the above, the committee finds that the claim that these images and/or *Gender Queer* as a whole is "pornography" does not have merit. The images in question are neither gratuitous nor sexually provocative. Taken in context, the scenes convey positive examples of consent, communication between partners, and boundary setting. In addition, professional/educational book review sources recommend the book for high school-aged students.

Of the district policies referenced in the complaints, only policies 9130 and 2530 were found to apply to the complaints. Both of these policies are addressed herein.

Given the statistics on suicide attempts and ideation among transgender and non-binary youth, several committee members noted that reading the author's journey in *Gender Queer* could "save the life" of a student in turmoil over their gender identity and/or sexuality, and provide important insight to other students seeking to understand and support them. Overwhelmingly, the committee members affirmed that this potential to save a life or to relieve a student from despair, along with the literary merits of *Gender Queer* outlined previously, far outweigh the potential drawbacks associated with isolated images taken out of context, and that the images alone did not merit removal of the book from the high school libraries.

Rationale for recommendation

As detailed above, the committee identified the following reasons for retaining *Gender Queer* in our high school libraries:

- *Gender Queer* was selected and purchased fully in accordance with HTSD Policy 2530. Committee members provided evidence regarding the book's ability to meet each of the policy's stated criteria.
- Diverse and inclusive literature, including the award-winning graphic memoir *Gender Queer*, in our high school libraries not only meet the district requirements under policy 2530, but student access to such literature is essential to meeting criteria set forth in HTSD's philosophy, mission, goals, and strategic plan.
- The availability of diverse and inclusive literature, including *Gender Queer*, in our high school libraries supports HTSD's compliance with:
 - *NJ Student Learning Standards for Comprehensive Health and Physical Education*,
 - *NJ Quality Single Accountability Continuum (NJQSAC)*,
 - *NJ Statutes for curriculum and instruction on Diversity and Inclusion (§ 18A:35-4.36), the History of disabled and LGBTQ persons (§ 18A:35-4.35), and Age-Appropriate Instruction Relative to Consent (§ 18A:35-4.38)*, and
 - *NJ Social & Emotional Learning Competencies*.
- LGBTQIA representation and inclusion in *Gender Queer* and similar books is important for our LGBTQIA students and their peers, providing "mirrors, windows, and sliding glass doors" (Bishop) into the author's experience of gender confusion/dysphoria and gender/sexual identity.
- *Gender Queer* offers important science-based information and examples of self-acceptance and peer/community support. The insights and experiences shared by the author can help readers build empathy, understanding, and acceptance of questioning- and gender non-conforming peers, other individuals, and themselves. This empathy, understanding, and

acceptance can be essential to the well-being of our transgender or nonbinary students, who are statistically more likely than their peers to ideate or attempt suicide.

- The claim that isolated images and/or *Gender Queer* as a whole is “pornography” does not have merit. The images and passages in question are not presented for the purpose of sexual gratification. Instead, the panels in question tell the author’s personal story in a frank, honest, and informational manner. None of the images in question involve children, one panel references classical Greek art and literature, and the other panel is set in a positive context of consent and communication between partners.

Finally, based upon District Policy 9130, which states,

“No challenged material may be removed from the curriculum or from a collection of resource materials except by action of the Board of Education, and *no challenged material may be removed solely because it presents ideas that may be unpopular or offensive to some,*”
(emphasis added)

and the U.S. Supreme Court decision in *Island Trees v. Pico*, which states,

“[W]e hold that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to “prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion,”

the award-winning book, *Gender Queer*, which was selected and purchased fully in accordance with District Policy 2530 - Resource Materials, should not and cannot be removed from our high school libraries in response to the complaint in question, or otherwise.

Outside sources

In reaching its conclusions, the committee consulted the outside sources listed in the bibliography attached as Appendix D to this report.

Appendix A - HTSD Policies and Regulations 2530 and 9130

[Policy #2530 - Resource Materials](#)

[Regulation #2530 - Resource Materials](#)

[Policy #9130 - Public Complaints and Grievances](#)

[Regulation #9130 - Public Complaints and Grievances](#)

I. Opening of the Meeting

A. Call to Order

The Hamilton Township Board of Education met in Regular Session on Wednesday May 24, 2023 at 5:31 P.M in the Auditorium, Hamilton East High School located at 2900 Klockner Road, Hamilton, NJ 08690. In accordance with board policy #0168, only the Presentations and Awards portions of the meeting will be video recorded.

B. Meeting Notice

Notice of this meeting dated May 15, 2023 was read by Katherine Attwood, Business Administrator/ Board Secretary. Furthermore, on that date, a copy of such notice was sent to The Times, The Trentonian and the Clerk of the Township of Hamilton. It was also posted on the bulletin board at the entrance to the Board Room in The James E. Stevenson Board of Education Building.

C. Flag Salute

D. Roll Call

Present: Stacy Byrne, Anthony Celentano, Dr. Susan Ferrara, Liam Gonzales, Christian Harvey, Richard Kanka, Dr. Jason McSheene, Dina Thornton and Susan Lombardo presiding.

Also present were: Dr. Scott Rocco, Superintendent; Ms. Katherine Attwood, Business Administrator/Board Secretary; Dr. Dennis Copeland, Director of Human Resources; Ms. Kimberley Ferlauto, Director of Guidance James O'Boyle, Director of Technology; Patrick Carrigg, Board Attorney; and interested members of the community.

II. Executive Session

Thornton

WHEREAS, N.J.S.A. 10:4-13 requires adoption of a resolution of the Board to go into Executive Session; BE IT RESOLVED, that the Board, pursuant to the Open Public Meetings Act, New Jersey Title 18A and the Hamilton Township Board of Education Bylaw No. 0166 hereby enters Executive Session to discuss matters involving:

A. Student Matter(s)

1. Confidential Administrative Hearing
2. Confidential Administrative Hearing
3. Confidential Administrative Hearing
4. Confidential Administrative Hearing
5. Confidential Administrative Hearing
6. Confidential Administrative Hearing
7. Confidential Administrative Hearing
8. Confidential Administrative Hearing
9. Confidential Administrative Hearing
10. Confidential Administrative Hearing

B. Matter(s) Falling Under the Attorney-Client Privilege

1. MO v Hamilton (HTEA v. Hamilton)
2. HTEA v Hamilton – PERC Matter
3. Horace Mann v HTBOE

BE IT FURTHER RESOLVED, that the minutes of this Executive Session shall be made public following formal action by the Board and/or at the conclusion of any investigation(s), due process proceeding, or litigation, so long as not prohibited by law and so long as the need for maintaining confidentiality no longer exists.

Celentano Ferrara
To recess to Executive Session.
Motion Carried: 9 in favor 0 opposed

The Board recessed to Executive Session at 5:32 P.M.
The Board resumed in Regular Session at 6:50 P.M.

Dr. James Altobello, Director of Administration; Marta Audino, Director of Student Services & Program arrived during Executive Session.

Student representative, Zaariya Bajwa was in attendance when Board resumed in regular session.

III. Award(s) Presentation(s)

1. Teacher of the Year and Educational Support Person of the Year Recognition
2. Presentation: School Ethics (presentation attached)
3. Presentation: Obscenity Laws (presentation attached)

IV. Announcements

A. Student Representatives

1. Ms. Bajwa gave updates on West, Steinert and Nottingham.
 - Nottingham
 1. Recent events include: senior prom and after prom at Funplex, spring instrumental concert, girls lacrosse and baseball won their senior day games, junior golfer advanced to state tournament, indoor percussion performed at MCCC teen arts festival, key club participated in field day at University Heights and Klockner.
 2. Upcoming events include: 2023-2024 senior portraits, senior awards June 7th, senior dinner June 13th and college picture June 2nd. AP testing, senior prom and Mr. NHS.
 - West
 1. Recent events include: senior prom, Mr. HHW, band performed in Disney, spring instrumental concert,
 2. Upcoming events include: Powder puff game, spring vocal concert, decision & donuts day, senior awards and senior trip to Dorney Park.
 - Steinert
 1. Recent events include: celebration of arts display, teen arts festival at MCCC, senior prom and after prom, Mr. SHS, softball and baseball teams won opening round of state tournament, senior breakfast and FBLA job fair.

B. Superintendent

1. Stated June 2nd is national gun violence awareness day and you can show your support by wearing orange.
2. Reminded everyone schools are closed May 25-30th, except Wilson will have school on May 25th due to a makeup day.
3. All three high school marching bands performed together in Disney this week.
4. June 7th is our annual aware because care where we recognize the talents of all our students.
5. Yesterday we released a list of college, career, trades and military choices of our 2023 seniors.
6. Congratulated Lalor on being awarded NJ State School of Character.
7. An information session was recently held regarding the William Patterson dual enrollment program.
8. Spoke out in support of all the district students especially our LGBTQ students and how everyone needs to feel support and safe no matter their differences and supports the recommendation of the book review committee regarding Gender Queer.

C. Board Members

1. Ms. Thornton spoke about CPAG's first whole child fair and thanked Ms. Audino and staff for holding such a wonderful event.
2. Ms. Byrne also attended the whole child event at West and spoke about the Progressive Center for Independent Living and the services they offer.
3. Ms. Harvey stated she attended the Mercer County school boards meeting where they had a presentation from Mercer County Clerk who went over school board election process.
4. Ms. Harvey mentioned pending legislation to ban school boards from banning books.
5. Ms. Harvey and Dr. McSheene spoke about Tech Night and what a wonderful event it was.
6. Ms. Thornton spoke about joint PTA initiative to help provide food for families in need.

D. Monthly Suspension Report

1. None

E. Monthly HIB Report

1. None

F. Monthly Health Report

1. Board members and administration discussed.

V. Committee Reports

G. Mr. Kanka – Finance and Operations

1. The committee met on May 17th and received an update from Dr. Rocco and discussed status of gun violence proclamation, food service renewal, lease purchase agreement, estimated budget surplus, demographic study, pre-k facility grant opportunity, turf field update, summer projects, Mercerville kitchen, paving projects, food service student debt and ACES contract.

H. Dr. Ferrara – Curriculum and Instruction

1. The committee met on May 17th and discussed renewal agreement with William Patterson dual enrollment, summer learning program, JumpStart programs, ESL tutoring, update on pre-K registration, grant submissions, evaluation of platforms similar to Naviance, platform to document HIB instances and the committee was notified of a review of transgender policy.

I. Ms. Thornton – Personnel

1. The committee met on May 17th and received an update from Dr. Rocco on turf fields and pre-k grant and discussed virtual academy for 2023-2024 school year and ongoing discussions concerning vacant positions.

J. Ms. Harvey – Book Review

1. Gave report and decision on the book Gender Queer. (report attached)

Board members discussed book review committee report.

VI. Hearing of Public

Steve Griegel

- Spoke about obscenity laws, Miller test and Peco case and that the Board should follow law to prevent lawsuits.

JoAnne Bruno

- Stated it was a unanimous vote to approved transgender policy at April Board meeting and hope they are not considering changing the policy as it has made children feel safe and comfortable.

Michael Myers

- Thanked Board for their comments in support of LGBTQ students.
- All students should feel respected and valued so they can achieve their fullest potential.

Steven Valeria

- Spoke about some historical instances of violence against LGBTQ individuals.
- Stated support of transgender, LGBTQ and queer students helps save lives.

Ferrara McSheene
Motion to extend public comment.

Harvey Ferrara
Motion for friendly amendment to limit speakers to 2 minutes each and extend public comment by 30 minutes.

Roll Call

Motion Carried 9 in favor 0 opposed

Colleen Affrime

- Spoke about school policy and inclusivity of transgender students. The policy is very important and protects the kids.

Mark Smith

- Thanked the Board for keeping the book Gender Queer on the shelves and hope they keep the transgender policy as it is today.

Joanne Wiedman

- Spoke about the importance of supportive adults in the lives of transgender and LGBTQ youths lives and they need to see books and policies that represent them.

Ashley Hobbs

- Spoke in favor of the current transgender policy and it should not be up for debate to have changes made to it. Gave statistics on transgender youth and suicide.

Reka Rubin

- Thanked Ms. Harvey and the book review committee for their recommendation to keep Gender Queer in our district libraries and thanked Dr. Rocco for his support on their recommendation.
- Spoke in favor of keeping the transgender policy as it was when it was reaffirmed at the April 2023 Board meeting.

Louise Walpin

- Stated the statistics on transgender youth suicide due to lack of family and school support; we need to safeguard our youth and decrease suicide and homelessness for gay and transgender youth by supportive policies like the one the district currently has in place.

Cecilia Colon Figueroa

- Spoke about her transgender child and thanked Dr. Rocco for his support and we need to do better as parents and a community.

Ewa Elliott

- Represents the NJ Association of School Libraries and came here to request support for school librarians against book banning.
- Thanked Dr. Rocco and Ms. Harvey for keeping Gender Queer in the school library.
- Thanked Mr. Carrigg for his presentations tonight and should be a model to use to help fight censorship.

Fran Carroll

- Gave statistics on transgender youth suicide.
- Spoke about national gun violence awareness day on June 2nd.

Paolo Belardo

- Spoke about an incident that occurred with child.

Stephen Chukumba

- Member of the Human Rights campaign and Garden State Equity; spoke about the negative light in which transgender people are viewed.
- Transgendered students need to feel validated, supported and feel safe and the district can do this by not banning books and keeping the current transgender policy.

Rose Griegel

- Asked Dr. Rocco to show support for newly elected Board member and not let speakers address her by name.
- Asked Mr. Carrigg to clarify some of the points made on his earlier presentation.

Ian Hartman

- Spoke about civility and schools should promote democratic values.

VII. Business of the Board

Personnel

Thornton Harvey
(P 1 – 15)

Harvey Gonzales
Motion to amend motion #14 and replace motion #14 item 2 with a hand carry agreement.

Motion Carried: 9 in favor 0 opposed

Upon recommendation of the Superintendent that the Board of Education approves the Appointments as per the attached. (P 1)

Upon recommendation of the Superintendent that the Board of Education approves the re-appointments of the employees as per the attached. (P 2)

Upon recommendation of the Superintendent that the Board of Education approves the coaching, EDP, and paraprofessional appointments as per the attached. (P 3)

Upon recommendation of the Superintendent that the Board of Education approves the appointments of daily substitute teachers, substitute staff, and long-term substitute teachers as per the attached. (P 4)

Upon recommendation of the Superintendent that the Board of Education approves the appointments of student teachers as per the attached. (P 5)

Upon recommendation of the Superintendent that the Board of Education approves the following additional compensation as per the attached. (P 6)

Upon recommendation of the Superintendent that the Board of Education approves the employee transfers and promotions as per the attached. (P 7)

Upon recommendation of the Superintendent that the Board of Education approves the salary adjustments as per the attached. (P 8)

Upon recommendation of the Superintendent that the Board of Education approves the leaves of absences as per the attached. (P 9)

Upon recommendation of the Superintendent that the Board of Education approves the resignations as per the attached. (P 10)

Upon recommendation of the Superintendent that the Board of Education approves the retirements as per the attached. (P 11)

Upon recommendation of the Superintendent that the Board of Education approves the reimbursement for unused days as per the attached. (P 12)

Upon recommendation of the Superintendent that the Board of Education approves the rescind of appointment as per the attached. (P 13)

Upon recommendation of the Superintendent that the Board of Education approves the increment withholding as per the attached. (P 14)

Upon recommendation of the Superintendent that the Board of Education approves the appointment of all current and former Hamilton Township School District teaching staff members who are in good standing and hold the appropriate certification to be eligible to serve as a teacher, guidance counselor, secretary or supervisor in the Hamilton Township Virtual Academy (HTVA) Alternative Learning Program for the 2023-2024 school year. (P 15)

Board members and Dr. Rocco commented on personnel motions.

Ms. Thornton recognized the retirees.

Roll Call

Motions Carried: 9 in favor 0 opposed

(Ms. Harvey abstained on P motion #2 item 2C line 15 and P motion #2 item 2H line 205 & 393, Dr. McSheene abstained on P motion #2 item 2G line 64, Ms. Thornton abstained on P motion #2 item 2C line 7, Dr. Ferrara abstained on P motion #14 item 2 and Mr. Gonzales abstained on P motion #2 item 2H line 282.)

Dr. Rocco recognized transfer of Roberto Kesting and the appointment of Jessie Mull as the Nottingham Athletic Director. Ms. Mull introduced herself and thanked the Board and administration at Nottingham.

Curriculum and Instruction Motions

Ferrara McSheene
(C & I 1 - 12)

Upon the recommendation of the superintendent that the Board of Education approves the payment for pupils sent to out-of-district schools (as per C&I Enclosure). (C & I 1)

Upon the recommendation of the Superintendent that the Board of Education approves the findings of the Administrative Hearing Committee for RJ, JS, AM, ZF, JR (Grice), GT, PS, DL, JR (North) and DN effective May 24, 2023 as per Confidential C & I Enclosure. (C & I 2)

Upon the recommendation of the superintendent that the Board of Education approves the Wellness Policy Annual District Summary Progress Report-2022-2023 (as per C&I Enclosure). (C & I 3)

Upon the recommendation of the superintendent that the Board of Education approves the Small Factory Innovations, Inc. price proposal for the SILAS curriculum for pre-vocational ASD program and transition program (as per C&I Enclosure). (C & I 4)

Upon the recommendation of the Superintendent that the Board of Education approves the Teaching Strategies quote for Coach Membership and PD Teacher Membership for the preschool curriculum (as per C&I Enclosure). (C & I 5)

Upon the recommendation of the Superintendent that the Board of Education approved the following potential student field trip destination (as per C & I Enclosure). (C & I 6)

Upon the recommendation of the Superintendent that the Board of Education approves the submission of the following grants - see chart below. (C & I 7)

Name of Applicant	School	Name of Funding Program	Amount Requested	Grant Purpose
Kimberly Ferlauto	Board Office (project at Wilson)	Rutgers TA & Leadership Academy	None	School Assessment and Action Planning, Mental Health Promotion, Early Intervention Services, Alignment of Student Services Using a Data-Driven Process, Risk Assessment, and Suicide Prevention Intervention
Kimberly Ferlauto	Board Office	Substance Abuse & Mental Health Services Administration (SAMHSA)	up to \$970,000 per year for up to 4 years	Provide mental health services, activities, and programs to our families, as well as professional development for our staff, with this program, SAMHSA aims to further enhance and improve trauma-informed support and mental health services for children and youth
Alejandro Battle	Board Office	United States Tennis Association	\$3,000	Replenish the tennis equipment from the original Tennis grant we received for all 24 buildings during the 18-19 SY.

Upon the recommendation of the Superintendent that the Board of Education approves the application for the William Paterson University Dual Enrollment Agreement for the 2023-2024 school year (as per C & I Enclosure). (C & I 8)

Upon the recommendation of the Superintendent that the Board of Education accepts the following donations (as per C & I Enclosure). (C & I 9)

Upon the recommendation of the Superintendent that the Board of Education approves the Professional Travel Events (as per C & I Enclosure). (C & I 10)

Board members, Dr. Rocco and administration discussed curriculum and instruction motions.

Dr. McSheene acknowledged gift donations.

Roll Call

Motions Carried: 9 in favor 0 opposed

Finance and Operations Motions

Kanka Celentano

(F & O 1 – 17)

Upon the recommendation of the Superintendent that the Minutes of the meetings of the Hamilton Township Board of Education be approved and released (as appropriate) at this time. (F & O 1)

Upon the recommendation of the Superintendent that the Board of Education approves the Secretary's Report as of March 31, 2023 as per the attached. (F & O 2)

Upon the recommendation of the Superintendent that the Board of Education approves the Financial Certification as per the attached. (F & O 3)

Upon the recommendation of the Superintendent that the Board of Education approves the March 31, 2023 Treasurer's Report, as per the attached. (F & O 4)

Upon the recommendation of the Superintendent that the Board of Education approves the Line Item Transfers, as per the attached. (F & O 5)

Upon the recommendation of the Superintendent that the Board of Education approves the Transportation Items and Bus Evacuations, as per the attached. (F & O 6)

Upon the recommendation of the Superintendent that the Board of Education approves Building Use Applications, as per the attached. (F & O 7)

Upon the recommendation of the Superintendent that the Board of Education approves the Food Services Financial Report, as per the attached. (F & O 8)

Upon the recommendation of the Superintendent that the Board of Education approves the Resolution for Purchasing, as per the attached. (F & O 9)

Upon the recommendation of the Superintendent that the Board of Education approves the bills list in the amount \$6,243,268.73 and ratifies the payrolls in the amount of \$11,837,172.78 and checks issued between meetings in the amount of \$2,442,027.32 for a grand total of \$20,522,468.83 as per the attached reports. (F & O 10)

Upon the recommendation of the Superintendent that the Board of Education approves district's membership in the New Jersey Interscholastic State Athletic Association (NJSIAA) and enrolls Hamilton East, Hamilton North and Hamilton West as members of the NJSIAA and to participate in the approved interscholastic athletic program sponsored by the NJSIAA for the 2023 - 2024 school year. (F & O 11)

Upon the recommendation of the Superintendent that the Board of Education approves the resolution to acquire and finance equipment by means of a lease purchase financing in an amount not exceeding \$1,740,000, authorizing the advertisement for bids to finance the equipment, delegating the award of the bid, authorizing the execution of the lease and related documents and authorizing other actions necessary to complete the transaction, as per the attached. (F & O 12)

Upon the recommendation of the Superintendent that the Board approves the submission of a grant application for the 2023 Safety Grant Program through the New Jersey School Boards Association Group's ERIC NORTH Subfund for additional cameras, and upgrade to software to ensure all cameras district wide are recording without problems, in an amount not to exceed \$20,658.00 for the period of July 1, 2023 through June 30, 2024. (F & O 13)

Upon the recommendation of the Superintendent that the Board of Education approves the Food Service renewal between Aramark and the Hamilton Township Board of Education for the SY 2023 - 2024, pending final approval from the State of New Jersey. This renewal is effective July 1, 2023 through June 30, 2024 and includes an Administrative/Management fee of \$0.20 per meal and a guaranteed return of \$275,000 to the Board. (F & O 14)

Upon the recommendation of the Superintendent that the Board of Education approves the Resolution to Purchase Natural Electric Generation Services and Gas Services through the Alliance for Competitive Energy Services ("ACES") as per the attached. (F & O 15)

Upon the recommendation of the Superintendent that the Board of Education approves the Resolution in Support of NJ Senate Bill 3203 and NJ Assembly Bill 4835, as per the attached. (F & O 16)

Upon the recommendation of the Superintendent that the Board of Education approves the Spiezle Architectural Group to make submission of application(s) and documentation regarding the NJSDA/NJDOE "Pre-School Facilities Expansion Project" at the locations listed below to the New Jersey Department of Education, for the review and Department approval of "Pre-School Grant Funding" and for amendment of the Long Range Facilities Plan to be consistent with the project requirements. (F & O 17)

Conversion of the existing Hamilton Township Municipal Building to a Pre-School Facility: DOE# not yet assigned.

Conversion of the existing Hamilton Township School District's Administrative Offices Building to a Pre-School Facility: DOE# not yet assigned.

Additions and Renovations to Robinson Elementary School to include Pre-School Facilities: DOE# not yet assigned.

Roll Call

Motions Carried: 9 in favor 0 opposed

(Ms. Thornton abstained on F&O motion #10 page 33 line 1-3 and Ms. Byrne abstained on F&O motion #10 page 17 #2217)

VIII. Other Business

Celentano Harvey
Motion to table discussion on policy 5756.

Motion Carried: 8 in favor 0 opposed 1 abstained
(Gonzales)

Kanka Gonzales
Motion for Board members to wear casual attire for June, July and August Board meetings.

Motion Carried: 8 in favor 1 opposed
(McSheene)

IX. Hearing of the Public

John Muca

- Spoke about book banning and enforcement of amendments and mandates.

Jennifer Williams

- Spoke about her children and family and their experiences being in the LGBTQ community and that transgender people are not a threat to anyone.
- Stated transgender policies are needed in order to keep transgender students safe. Keeping books and policies is the right thing and is also saving lives.

Fran Carroll

- Stated June 2nd is National Gun Violence Awareness Day and is disappointment the Board did not present a proclamation.
- Asked the Board to encourage everyone to wear orange on June 2nd in support of National Gun Violence Awareness Day.

Joe Marchica

- Thanked the Board for their stand against censorship and the committee for their report and recommendation on Gender Queer.

Lisa Linkowsky

- Spoke about books and poems being banned in Florida and that is why I keep coming to speak because we can't let that happen here
- The children are watching how the adults are handling all of these situations and we need to do better.

Channel Vickers-Ames

- Spoke about the mental health program at Wilson that the DCF committee tried to implement.
- Asked for an update on crosswalk at Wilson.

Harvey Kanka
Motion to encourage district to wear orange on June 2, 2023 for National
Gun Violence Awareness Day.

Board members discussed.

Motion Carried: 9 in favor 0 opposed

X. Executive Session

Thornton

WHEREAS, N.J.S.A. 10:4-13 requires adoption of a resolution of the Board
to go into Executive Session; BE IT RESOLVED, that the Board, pursuant to the
Open Public Meetings Act, New Jersey Title 18A and the Hamilton Township Board
of Education Bylaw No. 0166 hereby enters Executive Session to discuss matters
involving:

BE IT FURTHER RESOLVED, that the minutes of this Executive Session
shall be made public following formal action by the Board and/or at the conclusion
of any investigation(s), due process proceeding, or litigation, so long as not
prohibited by law and so long as the need for maintaining confidentiality no longer
exists.

Lombardo Thornton
To recess to Executive Session.
Motion Carried: 9 in favor 0 opposed

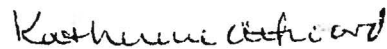
The Board recessed to Executive Session at 10:28 P.M.
The Board resumed in Regular Session at 10:38 P.M.

XI. Adjournment

Ferrara Thornton
To adjourn the meeting.
Motion Carried: 6 in favor 0 opposed

The meeting adjourned at 10:38 P.M.

Respectfully submitted,



Katherine Attwood
Business Administrator/Board Secretary

*Statement Read by Board Member Christina Vassiliou Harvey based
upon Ad Hoc Committee Reviewing Gender Queer's Report and
Summary of Applicable Law*

Dated May 24, 2023

I would like to thank my committee members for their hard work on this Committee: Francesca Miraglia, Renee Rogers, Kristin Mains, Ravi D'Elia, and Frank Ragazzo.

The Committee reviewing the book Gender Queer has issued its report evaluating the suitability of the book to remain on the shelves in our high school libraries. The Committee members each read the book, discussed it at five meetings, and collaborated to draft a substantial report. The book has a literary and educational value that further complements state-mandated curricula. The Committee concludes due to the book meeting the factors under Policies 2530 and 9130, it should remain on the shelf.

The Book

Gender Queer is a graphic autobiographical memoir authored by Maia Kobabe. Maia was born a girl, but e – eir preferred pronoun – never felt comfortable as a woman. In the book, e explains “it’s more about not being female than being male.” P. 148. Maia further notes that e does not want to take hormones because “I don’t want more gendered traits, I want less.” P. 174. Maia explains it is not about being male or female. P. 197. Maia concludes that e is asexual and identifies as non-binary.

The Policy:

The committee will report its findings to the Board. No challenged material may be removed from the curriculum or from a collection of resource materials except by action of the Board of Education, and no challenged material may be removed solely because it presents ideas that may be unpopular or offensive to some. Any Board action to remove material will be accompanied by

the Board's statement of its reasons for the removal.

The Committee reviewed the work as a whole with regarding to the following the factors outlined in Policy 2530 "Resource Materials":

1. Material will be suited to the varied interests, abilities, reading levels, and maturation levels of the pupils to be served;
2. Wherever possible, materials will provide major opposing views on controversial issues so that pupils may develop under guidance the practice of critical reading and thinking;
3. Wherever possible, materials will represent the many religious, ethnic, and cultural groups and their contribution to American heritage;
4. Materials will be factually accurate and of genuine literary or artistic value;
5. Materials will be of a quality and durability appropriate to their intended uses and longevity;

6. Materials will relate to, support, and enrich the courses of study adopted by the Board.

Factor 1 - suited to the varied interests, abilities, reading levels, and maturation levels of the pupils to be served.

The book is an easy to read graphic novel appealing to varied interests, including those exploring gender identity, those who want to understand the struggles of a non-binary person, and a general coming of age autobiography.

For the maturation level of the pupils served, our high schools have 30% below the age of 16, and 70% above the age of 16, with the average first-year student starting high school at the age of 14-15. The author stated e wrote for those 16 and older. Therefore, the majority of high school students fall within the author's target audience.

The plain language of the policy indicates that "varied" modifies the student's abilities, reading levels, and maturation levels, so this factor favors keeping the book in the library as the book meets the maturation levels of the majority of students served.

Only students enrolled in the high school are able to check out Gender Queer. However, students at Hamilton West and Steinert, where the book is not in the collection, are able to request the book through interlibrary loan. It bears emphasizing that younger students in middle school or elementary school are not permitted to access the book through interlibrary loan.

Professional reviews cite age ranges of grades 9 and up (Dar et al., "Gender Queer: A Memoir" 69, Frencham 60), grades 9-12 (Rice), grade 11 and up (Alverson 47), and "mature teens" ("Gender Queer" 66-67). Gender Queer has won multiple awards, and appears on numerous lists of books for teens, young adults, and high school students.

Given our libraries are open to all high school students, the book suits the maturity level of at least the majority of high school students, and those majority should not be limited even if a first-year student is deemed too immature for the subject matter.

Factor 2: Wherever possible, materials will provide major opposing views on controversial issues so that pupils may develop under guidance the practice of critical reading and thinking

The insights and experiences shared by the author can help readers build empathy, understanding, and acceptance of questioning- and gender non-conforming peers and other individuals. This empathy, understanding, and acceptance can be essential to the well-being of our most at-risk students who are transgender or nonbinary.

Factor 3: Wherever possible, materials will represent the many religious, ethnic, and cultural groups and their contribution to American heritage;

This factor is served because Ms. Kobabe's work represents an underrepresented cultural group – those of the non-binary and asexual.

Factor 4: Materials will be factually accurate and of genuine literary or artistic value;

This factor is met because the work is an autobiographical account of the author's struggles with gender identity. The book as a whole has

literary value in bringing awareness and understanding to an under-represented person's journey toward self-awareness and understanding of gender. This memoir has artistic value in the way the author is able to weave the trials and tribulations of coming to terms with eir sexuality and gender identity. Again, *Gender Queer* has won multiple awards recognizing its literary and artistic merit. It is worth noting that the *Journal of the American Medical Association* recommended this book to medical professionals based on its value as a window into the struggles of non-binary patients.

Factor 5: Materials will be of a quality and durability appropriate to their intended uses and longevity;

The book is in good shape as it was purchased in the last year. Our high school libraries include many paperback graphic novels of similar quality.

Factor 6: Materials will relate to, support, and enrich the courses of study adopted by the Board.

The book meets many District policies. For instance, it meets Outcome Goals 3, 5, 8, and 9 of Policy 2132.

It further meets standards set by State law. N.J. Stat. § 18A:35-4.36 (requiring Board of Education to select inclusive materials including those examining unconscious bias and gender identity); and N.J. Stat. § 18A:35-4.35 (requiring board of education to include instruction to high school students on transgender people).

The book also meets the 2020 Health Standard Curriculum Specifically, 2.1.12.SSH.3: Analyze current social issues affecting perceptions of sexuality, culture, ethnicity, disability status and make recommendations to address those issues. 2.1.12.SSH.5: Demonstrate ways to show respect for the boundaries of others as they relate to intimacy and sexual behavior.

Under the 2014 standards, the book meets required curriculum as well: Content Standard: Discussion of topics regarding sexuality requires a safe, supportive environment where sensitivity and respect is shown toward all. 2.4.12.B.4 Compare and contrast attitudes and beliefs

about gender identity, sexual orientation, and gender equity across cultures.

In addition to applying these factors under the Policy, the Committee requested information regarding obscenity laws and the First Amendment. Patrick Carrigg, Esq., Board Attorney, provided a lesson regarding the applicable laws.

In summary:

“Local school boards may not remove books from school libraries simply because they dislike the ideas contained in those books and seek by their removal to “prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 854, 102 S. Ct. 2799, 2801, 73 L. Ed. 2d 435 (1982)(quoting West Virginia Board of Education v. Barnette, 319 U.S. 624, 642, 63 S.Ct. 1178, 1187, 87 L.Ed. 1628 (1943)).

In terms of the rights of students to access library books, the United States Supreme Court has explained “[t]he right to read a book is

an aspect of the right to receive information and ideas, an ‘inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution.’” Counts, 295 F.Supp.2d. at 996 (quoting Pico, 457 U.S. 853, 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982)).

Although the complainants cite to the graphic depiction of sex in Gender Queer, material that is about sex, but has “an artistic, literary, or scientific value does not fall within” the definition of obscenity. State v. Higginbothan, No. 2548-21 (App. Div. Mar. 23, 2023). Id. at p. 15.

The Court in United States v. Miller, 413 U.S. 15, 24 (1973) noted the test for obscenity is: a) whether the average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; b) whether the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable State law; and c) whether the work taken as a whole lacks serious literary, artistic, political or scientific value.” The Appellate Division in Higginbothan found cartoon images cannot constitute child pornography.

“Students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding. The school library is the principal locus of such freedom”. Bd. of Educ. v. Pico, 457 U.S. 853, 868-869 (1982). The Court further explained that this Board’s discretion to remove a book from the library is not absolute. Id. The decision cannot be based upon a political ideology or a disagreement with the ideas in a book. Id. at 872.

It bears noting that the First Amendment protections only arise after the District has purchased and placed the book in the library – the District does not have to select every book, but once it has been selected (Policy 2530) and placed on the book shelf, we are obligated to follow our policy (9130) for its removal.

Obscene material is material which deals with sex in a manner appealing to prurient interest. Roth v. United States, 354 U.S. 476, 487 (1957). The portrayal of sex, e. g., in art, literature and scientific works, is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press. Id. Here, the work has a

literary purpose explaining gender identity, how a person can be asexual, and addressing the journey of a non-binary person. The book further addresses the conflicts among the LGBTQ community such as a feminist lesbian's response to a non-binary person's asexuality.

Gender Queer is not obscene because the work as a whole has educational and literary value. The author is not attempting to be “patently offensive,” and instead uses the images in the work to explain their point of view. In an interview with the Texas Tribune, the author stated, “I also want to have the best interest of young people at heart. There are queer youth at every high school — and those students, that’s [who] I’m thinking about, is the queer student who is getting left behind.” The author wrote the book to speak to queer youth in high school so that they would not feel as lost as the author did during high school.

The graphic images of sexual intercourse are not meant to fulfill a prurient interest, but rather when read in the context of the whole work, to explain how these experiences helped the author realize the author

was asexual based upon the author's response to those sexual encounters. The claim that isolated images and/or Gender Queer as a whole is "pornography" does not have merit. The images and passages in question are not presented for the purpose of sexual gratification. Instead, the panels in question tell the author's personal story in a frank, honest, and informational manner. None of the images in question involve children, one panel references classical Greek art and literature, and the other panel is set in a positive context of consent and communication between partners.

To call the images "pornographic," would be to ignore the meaning of the images combined with the words. Because this Board should be reviewing the work as a whole after having read the book, it cannot look at the images in isolation.

The two complaints alleged the work should be banned due to the graphic nature of some of the pictures in the book. The complaints viewed certain images as pornographic and inappropriate for children but as explained the work must be read as a whole and within context.

Given the author used the graphic images as a means to express the author's purpose regarding feeling asexual and alienated from the author's body, the book falls within protected speech under the Miller test and under New Jersey law.

One of the Complaints that states there is no educational value to the book overlooks State-required curricula, and that this library book provides further voluntary reading in conjunction with that curricula. The images that the complaints have found objectionable are used for a literary purpose to further the author's narrative as to why the author feels genderless. The images are used to convey the experience of an asexual person identifying as non-binary.

It bears noting one of the Committee members' comments based upon the member's work with children in our District. "This book could save a student's life." That comment went to the alienation that non-binary students feel, and that this book can bridge the gap between a person who identifies as non-binary and one who does not. The book

provides understanding of a person who does not fit into the stereotypes of gender.

The book at issue was added to the Nottingham library in December 2021. While one of the complaints states the book is available as an e-book to our students, it is not. So far, there have been no disciplinary issues associated with the book. One of the complainant's concerns regarding risky behaviors based upon having access to the book have not arisen. The one complaint suggests that high school students cannot read Gender Queer because the reader will engage in sexual situations due to the immaturity of the student's brains. There is no basis for this logical fallacy. Books exist as a safe place for people to learn. To think that simply reading a book will automatically cause a person to repeat behavior in a book, would mean people who read Of Mice and Men will kill their brother, people who read Fear and Loathing in Las Vegas will use copious amounts of illegal drugs, and people who read In Cold Blood will commit murder. There is simply no basis for the statement.

Moreover, the claim misses the entire point that the author of Gender Queer makes. Through the sexual experiences identified in the book, the author realizes that e is asexual – e does not get any gratification from sex. Taking the complainant’s claim to its logical conclusion, the book actually encourages abstinence, and thus, would not effectuate the harm that the complainant identifies.

One of the complaints further mentions the rating system of the Motion Picture Association of America. That rating system is a voluntary system enacted by movie houses and the movie industry. It bears noting prior to the MPAA, ordinances were struck as unconstitutional when local governing bodies attempted to censor films. Interstate Circuit, Inc. v. Dallas, 390 U.S. 676 (1968).

The Committee discussed the age rating of the book finding it was appropriate for high schoolers relying upon independent raters, which ranged from as low as 14 to others rating it for 16 and older. The ratings demonstrate that the book is appropriate for the majority of high school students. If the book is removed because of an arbitrary guidelines that

14 and 15 year-olds are not mature enough for the book, then the First Amendment rights of the majority of students – those 16 and older - are violated because removing the book from the shelf removes it for all.

Yet the majority of our high school students have a protected constitutional right to read the book. Furthermore, whether the minority of fourteen and fifteen year-olds have the maturity level for the book is subjective and dependent upon each student. A student's maturity is fact-specific and individualized for each student.

Cases have rejected less restrictive alternatives to a complete ban, such as creation of a special library section, parental consent, or an age requirement for a book. Counts v. Cedarville Sch. Dist., 295 F. Supp. 2d 996 (2003). This is because it stigmatizes the book. For instance, this public and this Board have stigmatized Gender Queer, fostering a student's fear that possession of the book could be a violation of the Code of Student Conduct, or worse, as has been stated at public Board meetings, that the book constitutes illegal child pornography, which it does not because it meets every factor of the Miller test for being a work

of literary and educational value. These comments have created a chilling effect on borrowing the book from the library. As one court noted, a student's First Amendment rights are "burdened because the books in question are 'stigmatized,' with resulting 'stigmatization' of those who choose to read them ('[c]hildren carrying the book with them in the school will be known to be carrying a 'bad' book.'" Id. at 999.

It should also be noted that even if *Gender Queer* can be borrowed from the Hamilton Township Library, that access does not justify this Board in banning the book. As the United States Supreme Court explained, "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." Reno v. Am. Civil Liberties Union, 521 U.S. 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997)(citing Schneider v. State, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939)).

The informal complaints regarding *Gender Queer* were raised at public meetings over a year ago before any formal complaint was filed under our policy. At that time, I posed as an inquiry to the Board that

there could be a policy change to satisfy the concerns. The current policy remains in effect. Therefore, under the policies of this Board, either the book remains on the shelf or the Board must set forth its reasons for pulling the book from the shelf.

The Board is bound by its policy. The Committee, after each member reviewing the book, found that the book had literary and educational value. In fact, the book complements New Jersey's laws and required curricula regarding gender identity. The book is a lesson for a person to understand and empathize with the struggles of being asexual and identifying as non-binary. The positive message for someone struggling with gender identity or wanting to understand the experience of someone going through this struggle outweighs any of the theoretical harm alleged in the complaints.

Based upon all of these issues, the Committee recommends that *Gender Queer* remain on the shelf at Nottingham library and accessible to all high school students in our District.