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*State of North Carolina*  
**General Court of Justice**  
**Sixth Prosecutorial District**  
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June 7, 2022

Sheriff Ed McMahan  
New Hanover County Sheriff's Office  
3950 Juvenile Center Road  
Castle Hayne, NC 28429

Dear Sheriff McMahan:

On May 19, 2022 you alerted me of complaints made by parents of middle and high school students that there are books in their children's school libraries that contain obscene and pornographic material. As a father of three children, I share the concerns of these parents.

On May 26, 2022, I met with Chief K. Sarvis, Major J. Hart, Captain L. Wyatt, Lt. N. Willaford, from the New Hanover County Sheriff's office to discuss their investigation of the materials in question. They provided me with a list of the books, the schools where they are found, and specific passages from them. You have asked my office to determine if the materials in question violate any criminal laws in our state. North Carolina General Statute 14-190.13 prohibits the dissemination of harmful materials to minors. The statute defines "harmful materials" as:

That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

- a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and
- b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and
- c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

Further, N.C.G.S. 14-190.15, which creates a Class 1 misdemeanor offense for dissemination of harmful materials to minors, explicitly exempts parents, schools, libraries, and other governmental and medical agencies from its purview:

**(c) Defenses.** — Except as provided in subdivision (3), a mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:

- (1) The defendant was a parent or legal guardian of the minor.
- (2) The defendant was a school, church, museum, public library, governmental agency, medical clinic, or hospital carrying out its legitimate function; or an

employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.

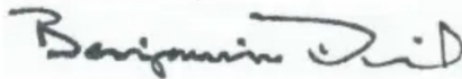
(3) Before disseminating or exhibiting the harmful material or performance, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.

(4) The dissemination was made with the prior consent of a parent or guardian of the recipient.

N.C.G.S. 14-190.15 (c)(2) prevents schools and their employees from being charged under this statute, assuming that the materials were disseminated as a legitimate function of employment with the school system. Your investigation did not produce any evidence that the presence of these books was not a legitimate function of employment.

Thank you for reaching out to my office regarding this matter. If you have further questions please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Benjamin R. David". The signature is written in a cursive style with a large, sweeping initial "B".

Benjamin R. David  
District Attorney