



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Ave., Suite 725, Milwaukee, WI 53202-3141
414-727-WILL
Fax 414-727-6385
www.will-law.org

July 13, 2021

Dr. Mark Hansen
Superintendent of Schools
Elmbrook Schools
3555 North Calhoun Road
Brookfield, WI 53005

Dear Dr. Hansen:

The Wisconsin Institute for Law & Liberty (WILL) is a non-profit public-interest law firm dedicated to the rule of law, individual liberty, constitutional government, and a robust civil society. We have recently become aware that the Elmbrook School District has been making available sexually explicit materials to children as young as 9 years old and perhaps younger. Our concern is not whether these materials have merit or whether they are protected by the First Amendment. State law has long recognized that parents have a right—and often a duty—to supervise what their minor children are exposed to. So, while material may be protected by the First Amendment, that does not mean that children have a right to see it or that a school district has a right to disseminate it. The fact that Elmbrook has apparently made these materials directly available to children without parental notification and a reasonable opportunity for parental control violates state law and parents' constitutional rights, as described fully below.

To be fair, we have also heard that Elmbrook may be attempting to amend its policy. It should. But parents now need to be reassured that Elmbrook will follow the law. It is not enough to silently change things or pretend that Elmbrook's violation of state law never happened. Certain information must be made available to the district's parents as more fully described below.

On July 5, 2021, the parent of a sixteen-year-old Elmbrook student used that student's school-issued Chromebook to access Sora, which is a school-sponsored app that makes available Elmbrook's eBook and audiobook collection to students "for all levels – preschool to adult," according to your website. This parent also accessed elmbrook.follettdestiny.com, which shows what physical books are available at Elmbrook school libraries.

This parent confirmed that sexually explicit materials are available through Elmbrook-issued Chromebooks to Elmbrook students. Since July 5, 2021, other parents have confirmed that these books are available via Chromebooks to children as young as 3rd grade. Based on input from several parents, we believe that these materials may have been available to all students, K-12, at least as of July 5.

We will not describe this material here, but the Addendum to this letter contains a small portion of the materials available to Elmbrook students. For the purposes of this letter, it suffices to say that Elmbrook has made available to children materials that instruct readers on the pros, cons, and “how to” of certain sex apps. It has made books available that describe a wide variety of sexual practices, along with anatomically “correct” illustrations. It has made available materials that endorse casual sex and that take issue with certain religious views of human sexuality (specifically Islam and Christianity). Given news coverage of this matter, we assume that you are aware of at least some of the material at issue. To be clear, our objection to this material is solely related to the sexually explicit nature of this material and its availability to children, not its reference to sexual orientation.

As of at least July 5, parents have reported that these books were available electronically to students as young as 3rd grade. And as of today, parents report they are still available to students in the 6th grade. Moreover, downloading or viewing these electronic titles appears to evade Elmbrook’s parent-oversight program called Securly. According to Elmbrook’s website, “The Securly App allows parents insight into their student’s internet experience. Through the app, parents are able to monitor their student’s internet history and search terms.” Yet parents report that when a student uses Sora to search for sexually explicit materials, those searches and downloads are not reported to parents via Securly.

Elmbrook’s promotion of sexually explicit materials to minors is not limited to Elmbrook’s Sora app. For example, the Wisconsin Hills Middle School Library offers sexually explicit materials including one book which describes full-body nude illustrations of a young boy engaged in a sexual act.

While there may be parents who endorse and desire these materials, it should not take much moral imagination to recognize that others do not. More importantly, Elmbrook’s practice of offering sexually explicit materials to students presents at least two problems under Wisconsin law. First, Section 118.019 of the Wisconsin Statutes closely regulates human growth and development instruction in public schools. The law requires all instruction to be “age appropriate,” which the materials discussed in the Addendum clearly are not. Moreover, the law requires schools, as part of any curriculum on these topics, to present “medically accurate information” and to include several other “required subjects,” such as abstinence, parental responsibility, pregnancy, sex offender registration, and criminal penalties under Section 948, which these books do not do. Finally, Wisconsin state law requires transparency in what materials are included in human growth and development instruction. Parents have reported that Elmbrook has not disclosed the use of these materials as part of their human growth and development curriculum. If these books are not part of a curriculum, then one wonders why Elmbrook has chosen to offer them to young children.

These safeguards are important because parents have the right to “direct the upbringing and education of children under their control.” *Matter of Visitation of A. A. L.*, 2019 WI 57, ¶ 15. Parents, not schools, are the primary decision-makers with respect to their minor children. *Parham v. J. R.*, 442 U.S. 584, 602 (1979).

Elmbrook's decision to provide these sexually explicit materials, outside of the statutorily permitted human growth and development instruction, undermines these basic parental constitutional rights.

Second, Wisconsin Statutes prohibit the provision of any "narrative account of sexual excitement" to a child. While this law, Section 948.11, currently provides an exemption for school libraries and school boards, one wonders why Elmbrook would offer such materials, which would otherwise potentially violate a felony criminal provision.

On behalf of several concerned Elmbrook parents, we demand that Elmbrook takes several steps to bring the district into full compliance with state law. First, Elmbrook must investigate and publicly identify all sexually explicit materials currently available to any students through the Sora app or physically within Elmbrook school libraries. Also, Elmbrook must, for the sake of transparency, identify which sexually explicit materials were available earlier this year, but have since been removed for all or some grade levels. Second, Elmbrook should remove access to all sexually explicit materials that are available outside the district's official human growth and development instruction. Third, Elmbrook should ensure that Securly, or another parent-oversight app, is available to allow parents to know whether their children are searching or downloading sexually explicit materials from an Elmbrook-sponsored site. Fourth, we request that Elmbrook employees be trained in compliance with Wisconsin state law on the topics of human growth, development, and sexuality. If such training is already provided, we request that Elmbrook modify this training to explain why Elmbrook's policy of providing sexually explicit materials outside of the statutory confines is illegal. Finally, we request that you apologize to the taxpayers of the District for whom you work, to the parents who have entrusted their children to your care, and to the children to whom you have given sexually explicit materials.

We understand that you may be in the process of revising your access policies. On July 12, 2021, *The Daily Wire* published an article highlighting just a few of the materials we refer to. Before the piece was published, the parent of a 3rd grader had complete access to the materials described in this letter. But shortly before 5 p.m. on July 12, another parent of a 4th grader reported that he could not access the books described above. On the other hand, as of the evening of July 12, the parent of a 6th grader could still access all materials even after *The Daily Wire* article.

Therefore, in order for Elmbrook parents to get a better understanding of exactly what is going on, we make the following open record requests under Wisconsin state law. Please provide electronic copies of the following:

1. All emails or texts sent or received between July 5, 2021, and today, relating to the availability of sexually explicit materials on Sora;
2. All emails or texts sent or received on July 12, 2021 or July 13, 2021, mentioning, relating to, or referring to inquiries from *The Daily Wire*;

3. Any and all change logs created or modified on or after July 5, 2021, reflecting changes to access to the Sora app or library materials via Elmbrook issued Chromebooks; and

4. Any and all policies that govern access to Sora by students, including any records reflecting changes made to these policies since July 5, 2021.

Given that WILL is a non-profit organization, and that the Elmbrook parents objecting to your policies are taxpayers who ultimately pay for your compliance with open records laws, we request that you waive any fees associated with this request.

We would appreciate a response by August 2, 2021. If we do not receive a satisfactory response, we may seek declaratory and injunctive relief in court to ensure Elmbrook's full compliance with Wisconsin state law and parents' constitutional rights.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
Rick Esenberg, President & General Counsel



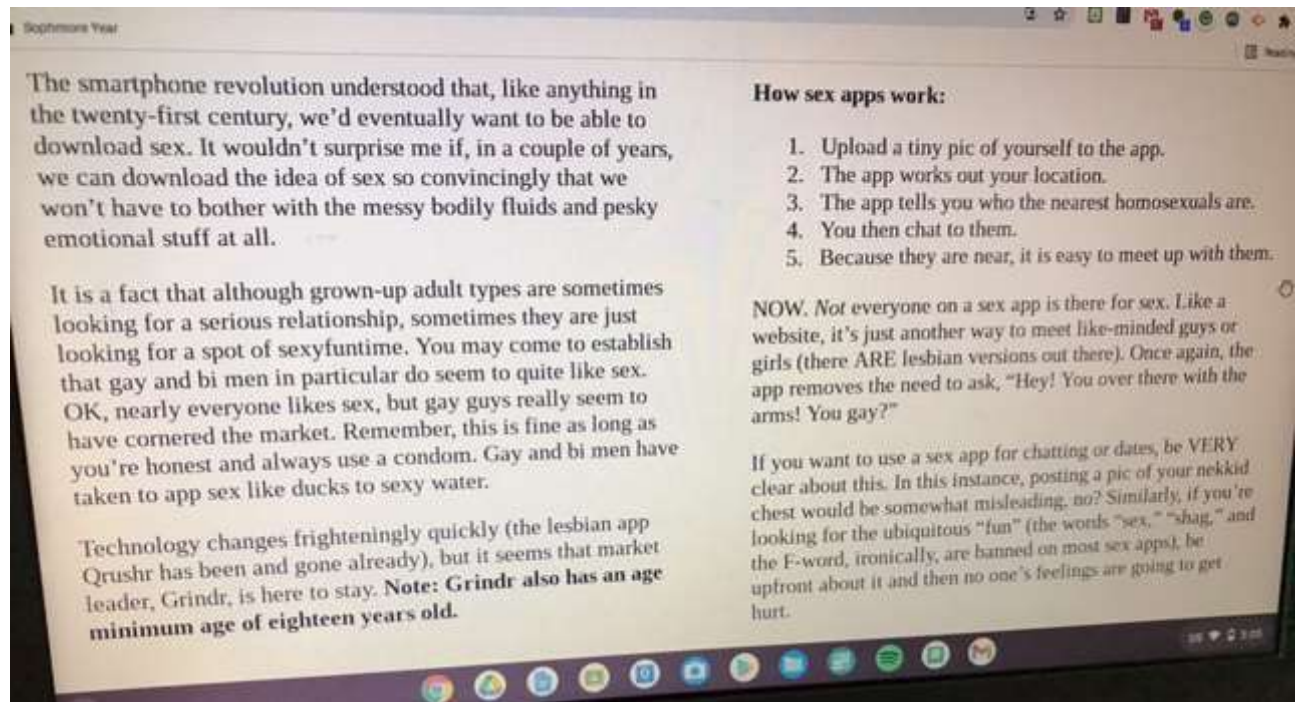
Daniel P. Lennington
Deputy Counsel

Dated: July 13, 2021

ADDENDUM

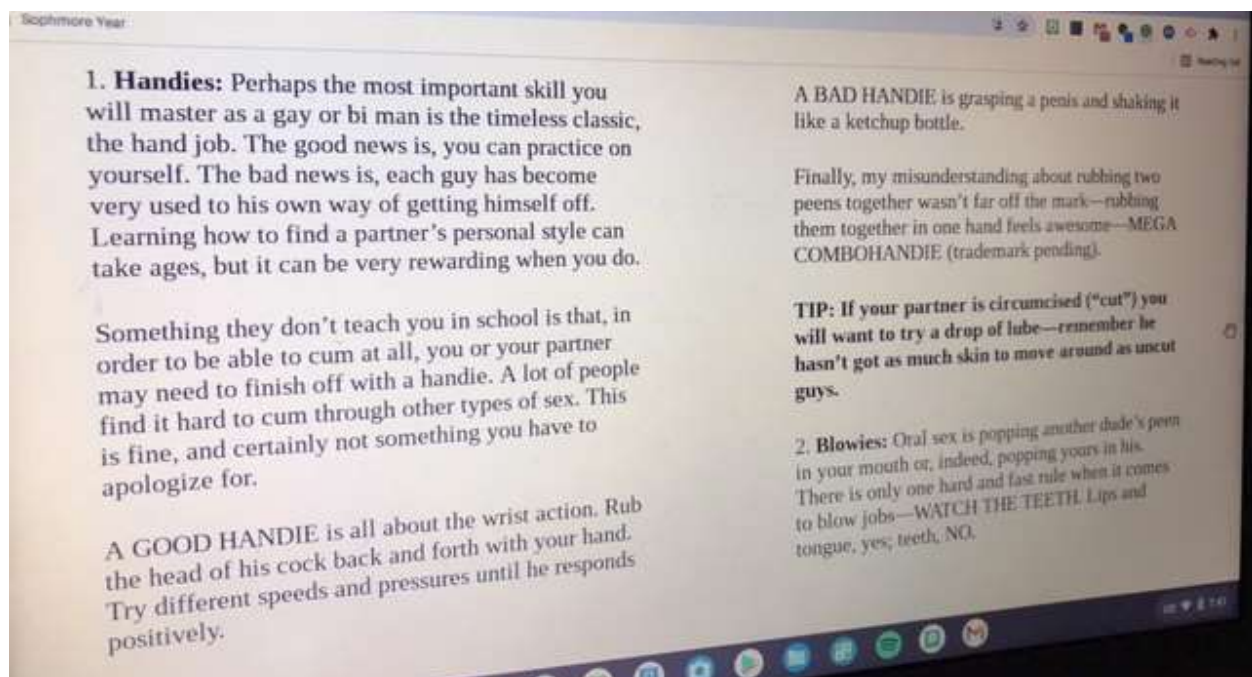
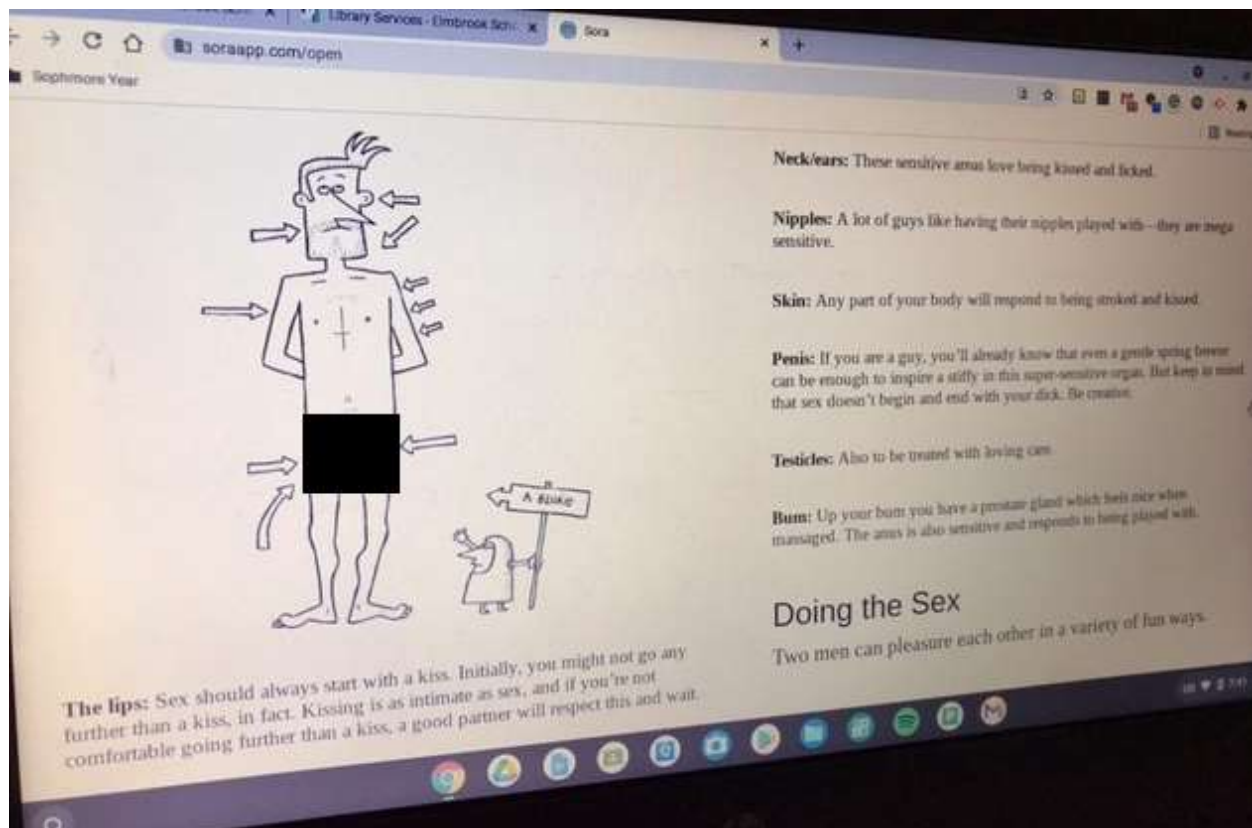
The following are excerpts, screenshots, and descriptions from books available to Elmbrook students either via Sora or in person at a school library.

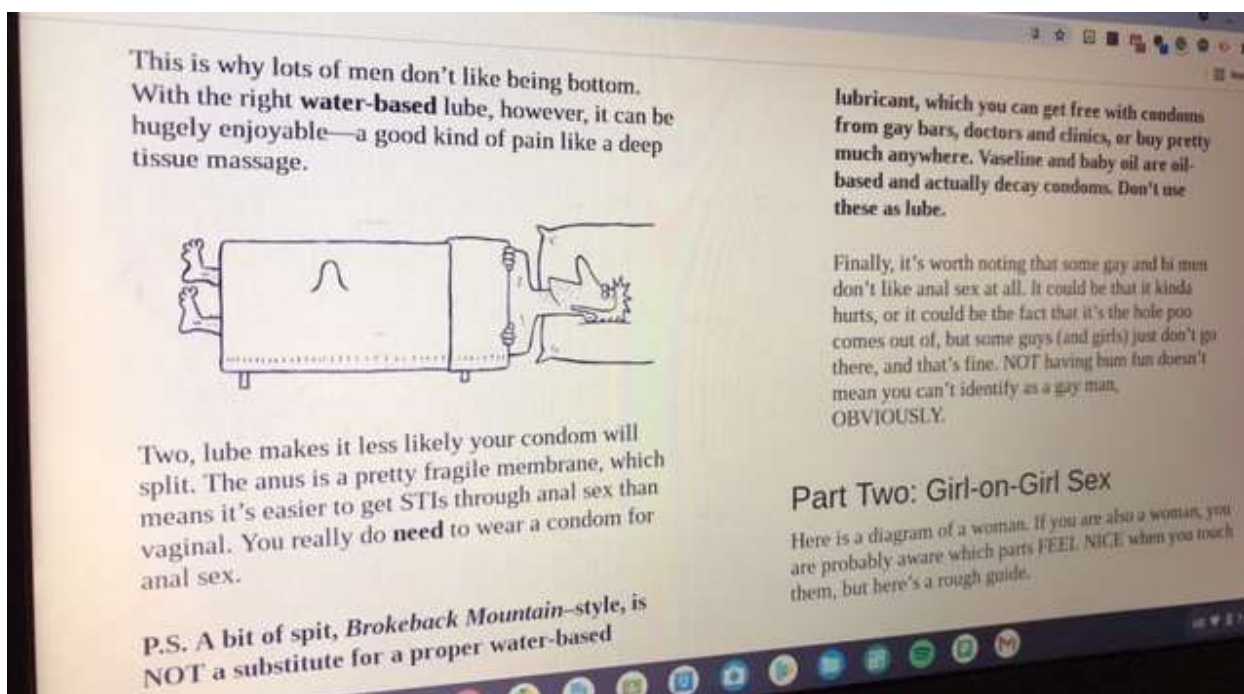
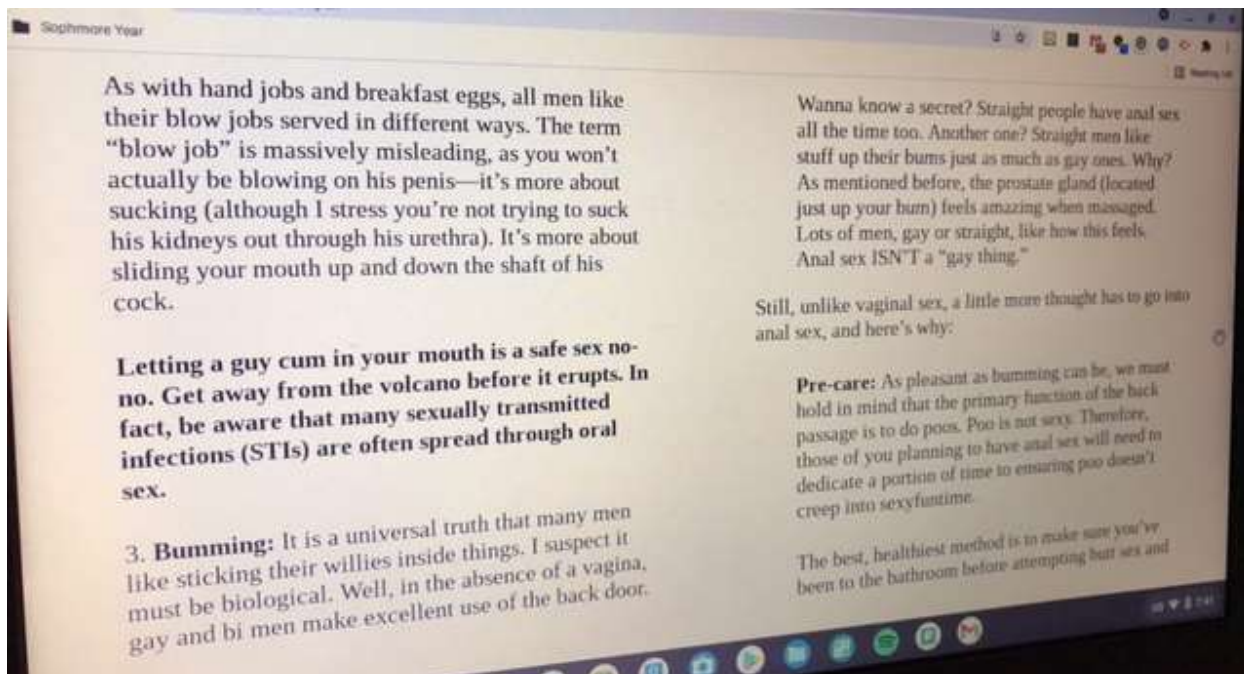
This Book is Gay contains a chapter entitled “The Great Sex-App Debate” that instructs readers on the pros and cons of certain sex apps, such as Grindr. In one portion of this chapter, the author explains “how sex apps work” with detailed instructions including how to “upload a tiny pic of yourself to the app,” how to “chat with [other people on the app],” and then how “it is easy to meet up with them.” The book discusses how “grown-up adult types are sometimes looking for a serious relationship, sometimes are just looking for a spot of sexyfuntime,” and that sex is “fine as long as you’re honest and always use a condom.” Below is a screenshot from the Elmbrook-issued Chromebook that shows some relevant sections:



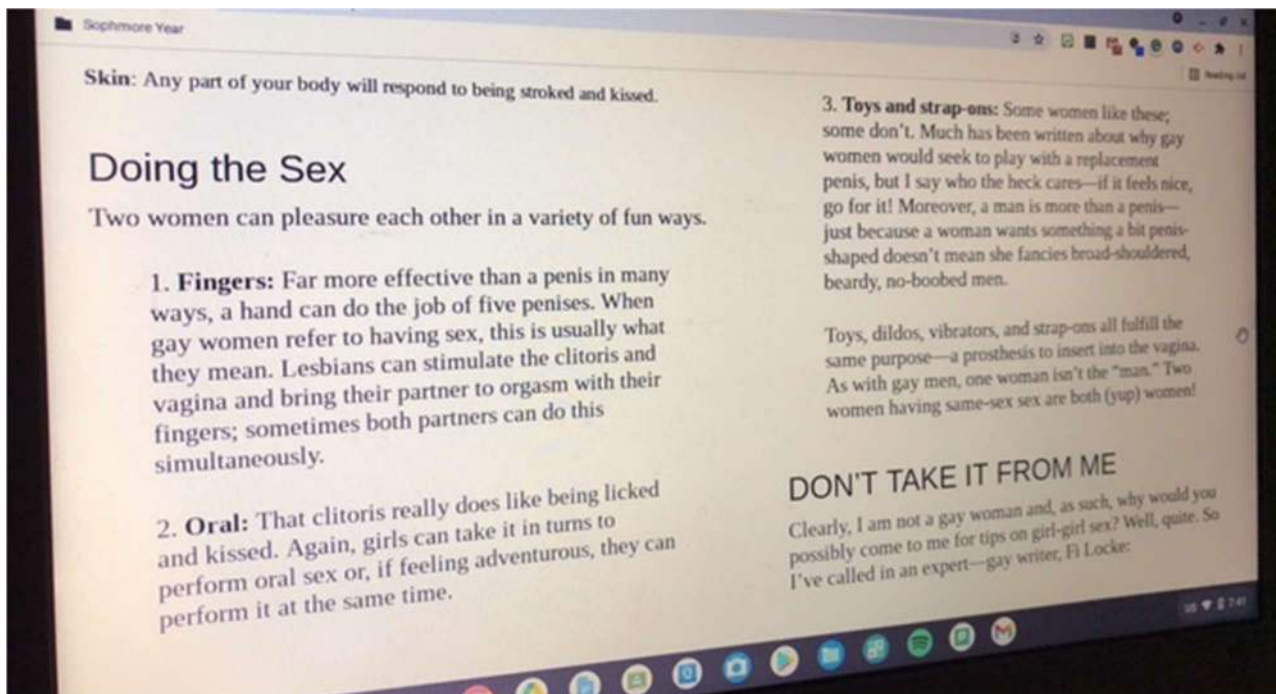
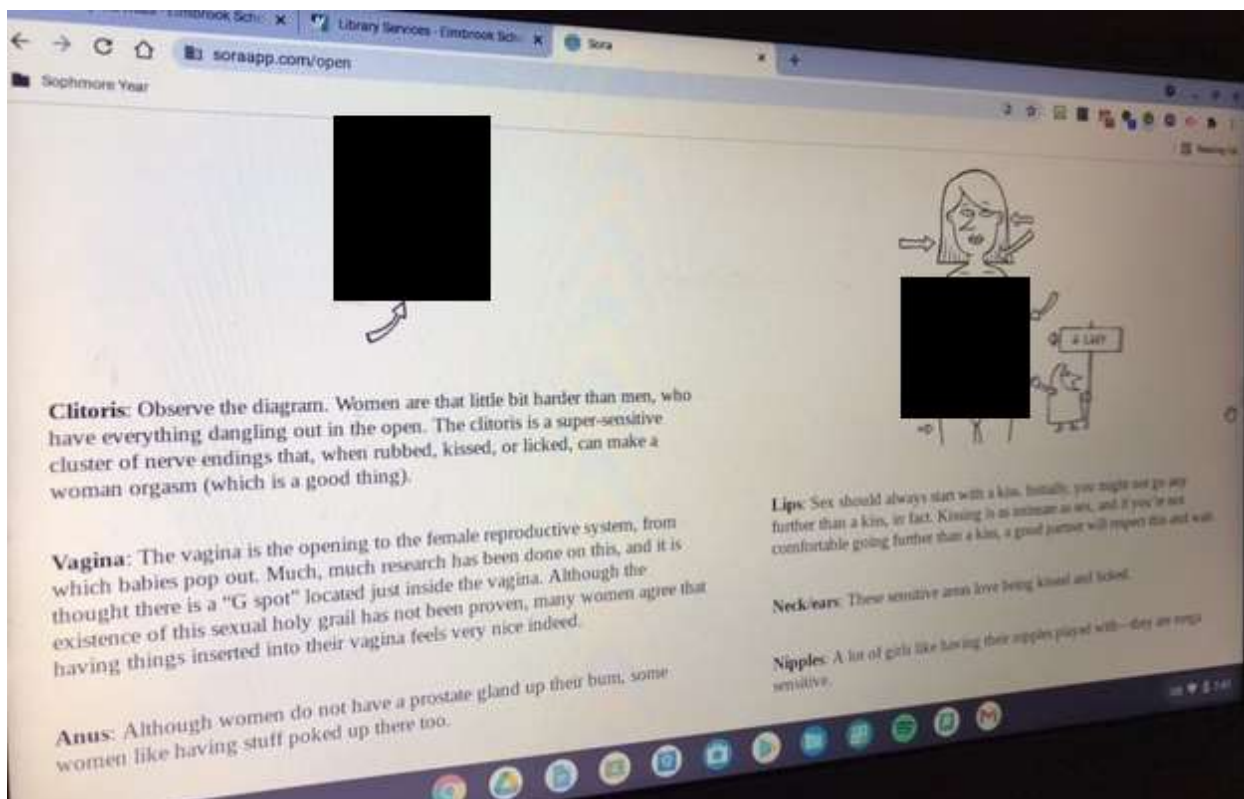
A parent of a sixth grader shared these images from her child’s Elmbrook-issued Chromebook. These sections of *This Book is Gay* contain dozens of “narrative account[s] of sexual excitement,” as that phrase is used in Wisconsin law (discussed more below). For example, the book gives detailed discussions of erogenous zones and “doing the sex,” how to perform “a good handie,” how to perform oral sex (“blowies”), anal sex (“bumming”), lubrication, and details and pictures to assist the reader with “girl-on-girl sex.” *This Book is Gay* has a detailed section entitled “Let’s talk about dildos,” role-playing, and even “trans sex.” Some of the following images have been redacted to remove depictions of genitals. Elmbrook students, however, have access to the entire images.

Redacted image:

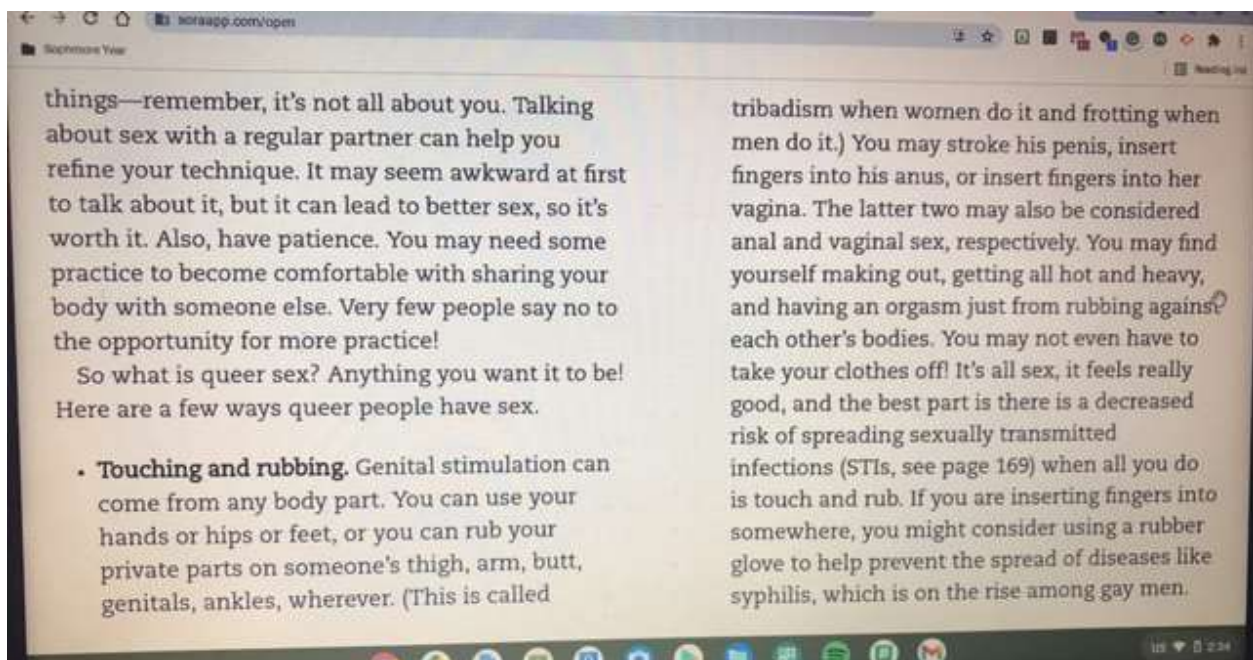
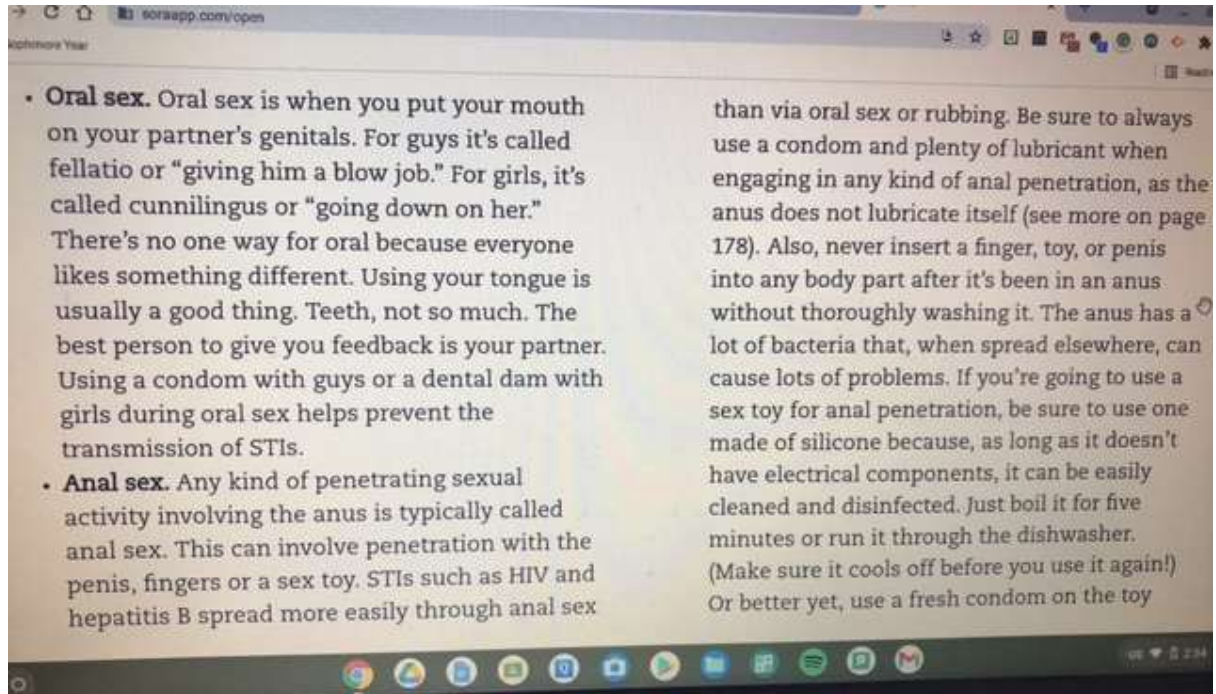


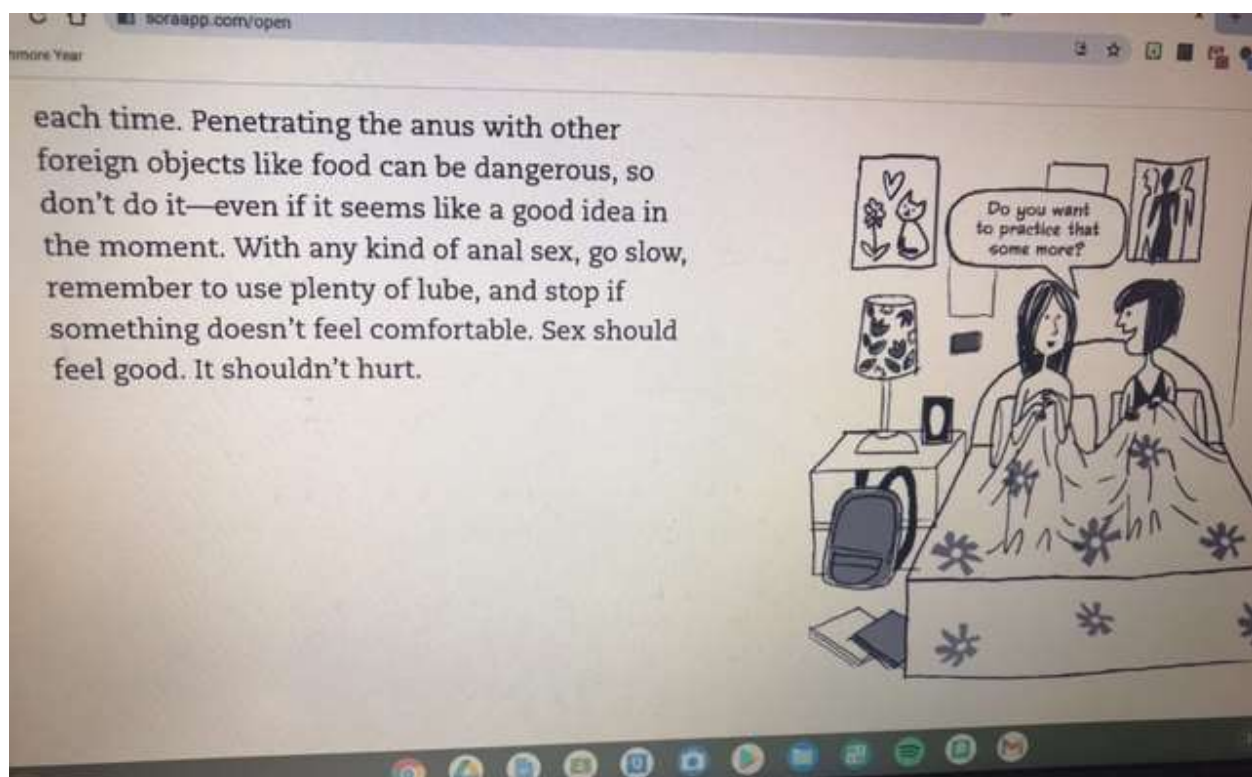
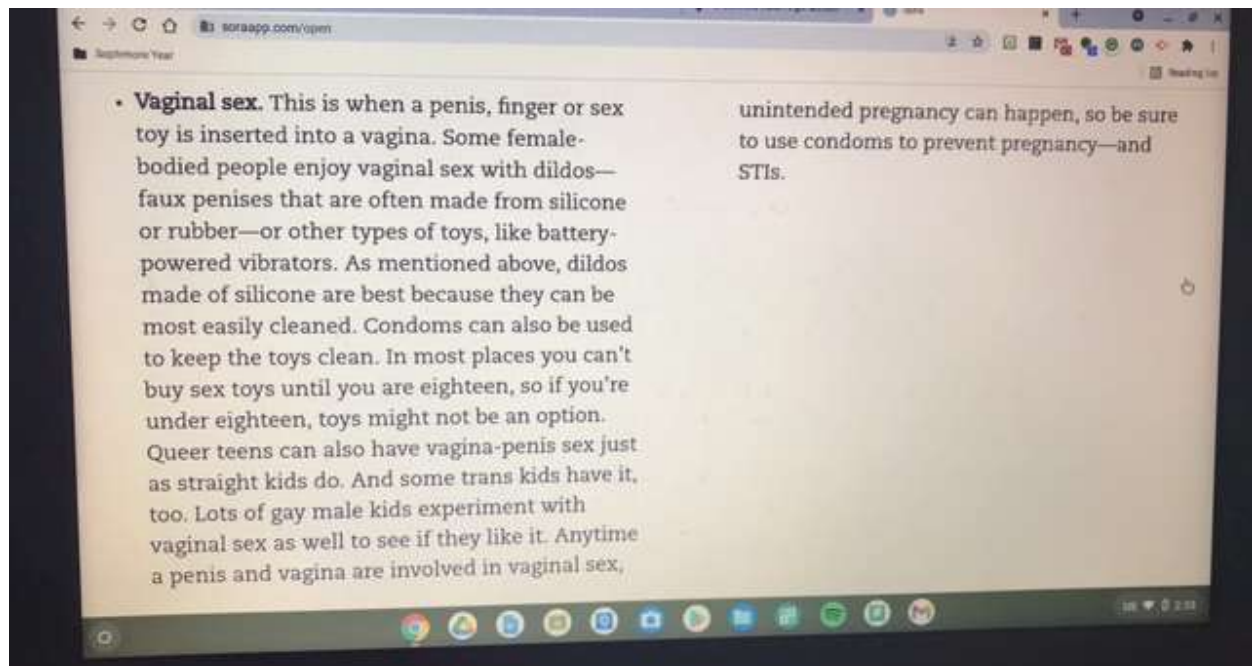


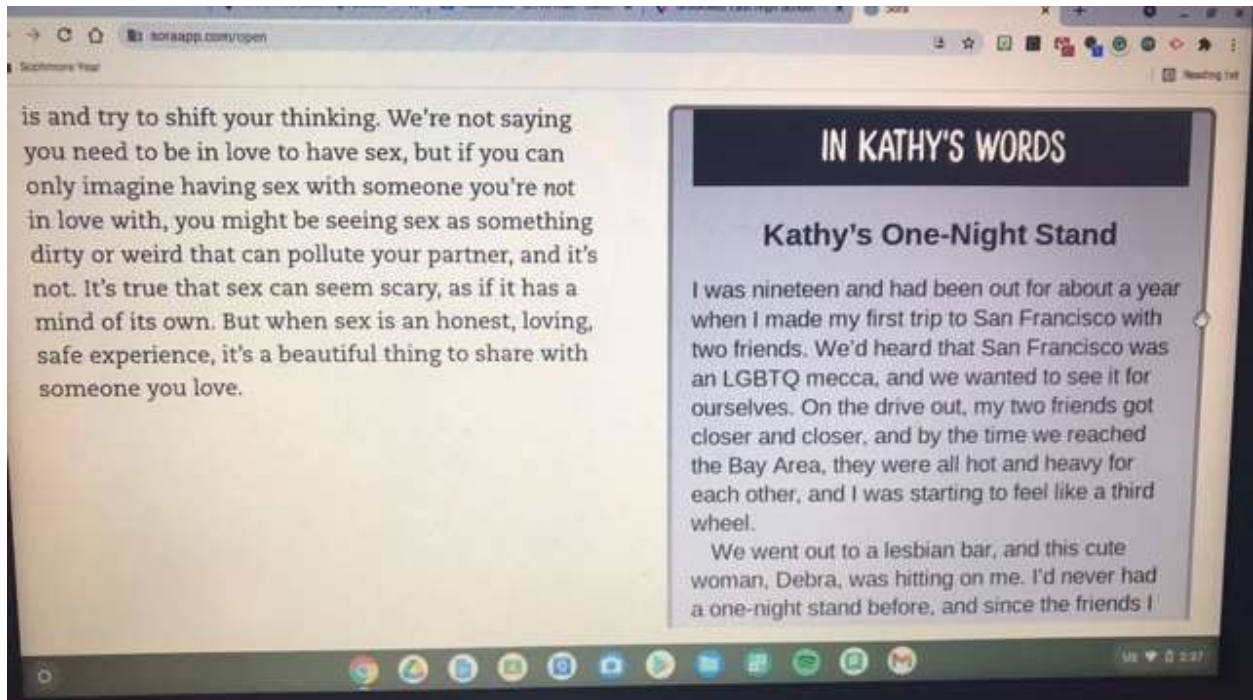
Redacted image:



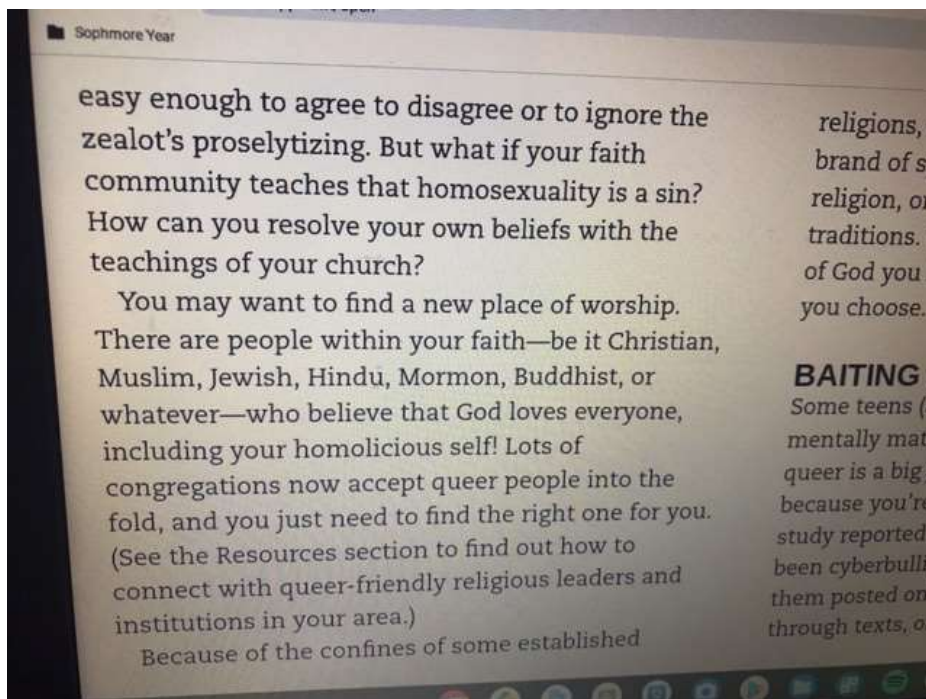
In a second book offered by Elmbrook's Sora, *Queer: The Ultimate LGBTQ Guide For Teens* by Kathy Beige, the author offers a work around for "online dating" when an app has a minimum age of eighteen: "Be aware that many dating sites have a minimum age of eighteen, **although some people arrange dates through Twitter or Facebook too.**" (emphasis supplied). In *Queer*, the author offers detailed information and instructions around oral sex, anal sex, vaginal sex, "touching and rubbing," and "queer sex."







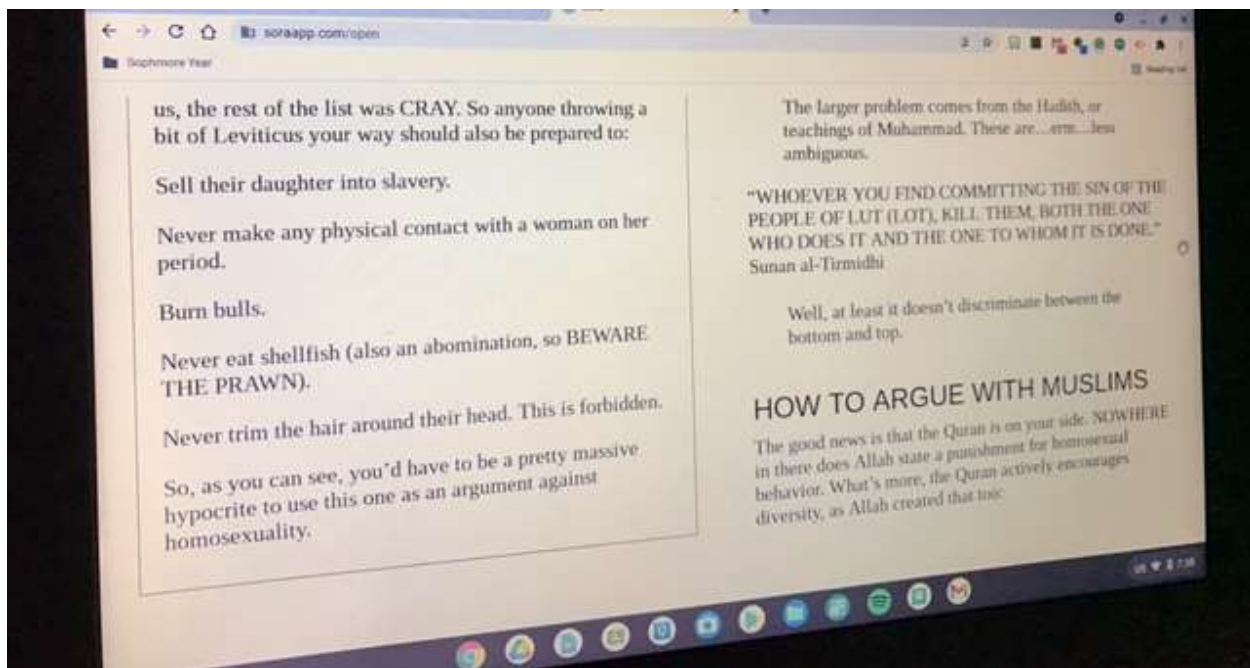
In *Queer*, the authors also deal with religious objections, and note that “you may want to find a new place of worship” if your church does not accept the student’s sexual practices.



Similarly, in *This Book is Gay*, the author provides at least nine pages of detailed notes on “how to argue with a Christian.” One example is below:



The book also teaches “How to Argue with Muslims” and discusses the beliefs and practices of Islam, and how they conflict with the LGBTQ lifestyle:



Elmbrook's promotion of sexually explicit materials to minors is not limited to Elmbrook's Sora app. For example, the Wisconsin Hills Middle School Library offers sexually explicit materials including the book *Things Tom Likes: A Book About Sexuality And Masturbation For Boys And Young Men With Autism And Related Conditions*, by Kate Reynolds. The book includes full-body nude illustrations of a young boy engaged in masturbation (image below has been redacted). Below is Elmbrook's summary:

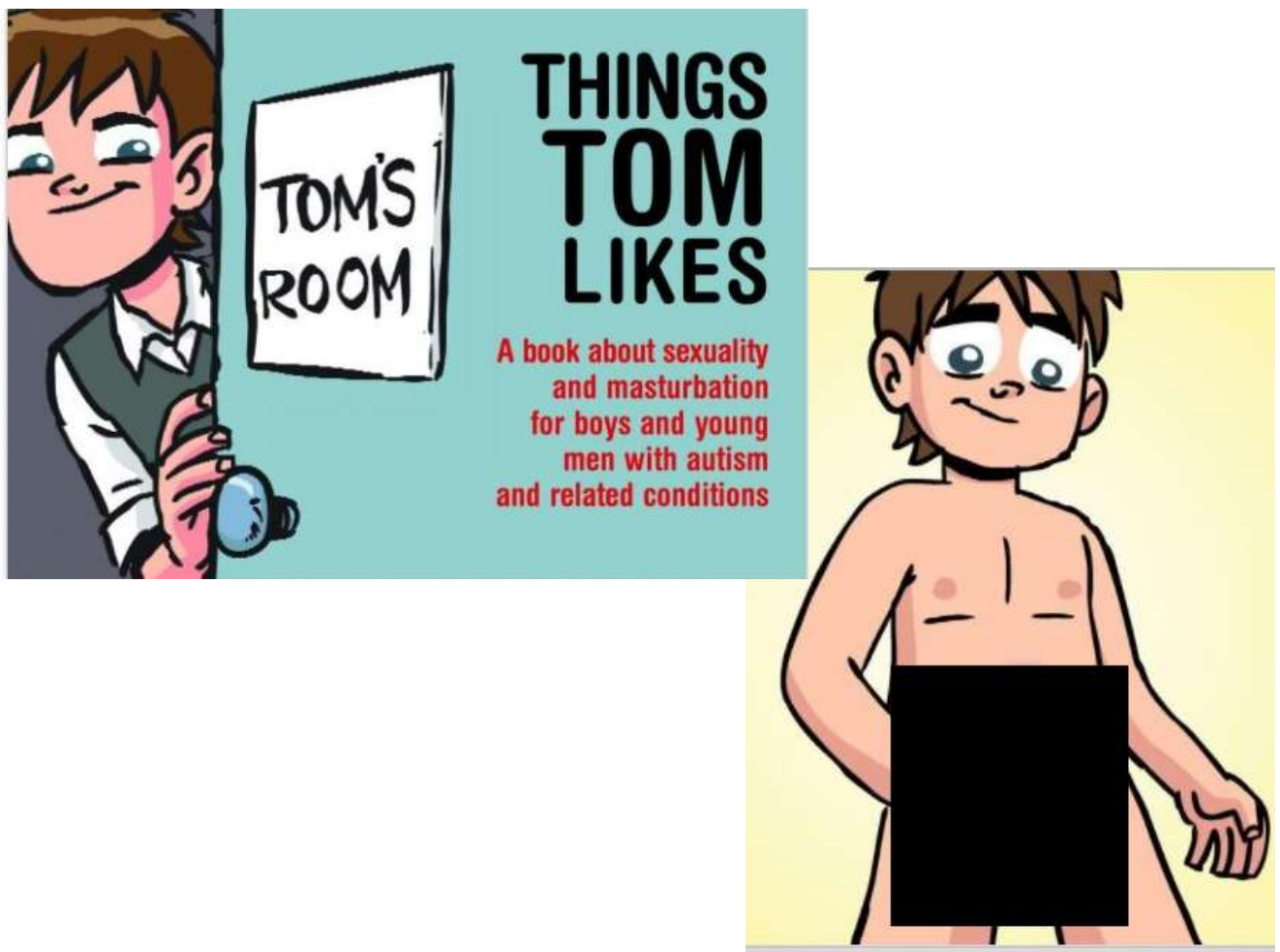


Summary / Annotation

[Top](#)

Tom likes lots of different things. He likes singing and watching TV in the family room. There are also things that Tom enjoys doing in private, like touching his penis.

This accessible and positive resource helps parents and carers teach boys with autism or other special needs about masturbation. It covers when and where it is appropriate and helps to establish boundaries surrounding privacy more generally. With simple but explicit illustrations, this book provides the perfect platform to talk about sexuality with boys and young men with autism or special needs.



Below is a screenshot of the only information that an Elmbrook parent will receive if their children obtain these images via Sora:

