March 3, 2025

Via Email to OCR@ed.gov
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: Complaint Against the California Department of Education, Los Angeles Unified School District, San Francisco Unified School District, and Capistrano Unified School District Arising from "Gender Identity" Policies and Practices in Violation of Title IX

To Whom It May Concern:

Pursuant to the discrimination complaint resolution procedures of the U.S. Department of Education's ("Department") Office for Civil Rights ("OCR"), we bring this federal civil rights complaint against the California Department of Education ("CDE"), Los Angeles Unified School District ("LAUSD"), San Francisco Unified School District ("SFUSD"), and Capistrano Unified School District ("CUSD") for discrimination on the basis of sex in education programs or activities that receive federal financial assistance in violation of Title IX of the Education Amendments of 1972 ("Title IX").[1]

The Defense of Freedom Institute for Policy Studies ("DFI") is an independent nonprofit legal and public advocacy organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting the civil and constitutional rights of Americans at school and in the workplace. Such rights include the right not to be excluded from equal opportunities in federally funded education programs or activities due to prohibited discrimination on the basis of sex, including by requiring students and employees to share intimate facilities with members of the opposite sex as a condition of participating in a school's education programs or activities.

[1] 20 U.S.C. §§ 1681 *et seq*.

The California Justice Center, APC ("CJC") is a public interest law firm founded to dismantle government barriers to freedom and prosperity in California. Through litigation, advocacy and education, CJC defends constitutional principles, pushes back against government overreach, advances individual liberty, and fights for student-focused excellence and non-discrimination in education.

We request that OCR investigate the policies and actions described below, consider potential sanctions against CDE and the school districts as authorized under Title IX,[2] and place these entities on clear notice that failure to comply with federal law in their policies concerning access to intimate facilities in education programs and activities will result in the withdrawal of federal funding.

Facts

California Public Schools and "Gender Identity" Law

California public K–12 schools enrolled 5.9 million students at the start of the 2023–24 school year—more than any other state school system in the country.[3] As of the 2020–21 school year, California public K–12 schools received over $15 billion in federal revenue—the most revenue received by any state for their public elementary and secondary schools and accounting for approximately 17 percent of total revenue distributed to public K–12 schools by the federal government across the country.[4] Additionally, beginning in March 2020, Congress allocated over $25 billion to the State of California for the purpose of COVID-19 pandemic relief for public K–12 students.[5] As a state education agency, CDE is bound by Title IX's prohibition against discrimination on the basis of sex.[6]

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[2] *See* 20 U.S.C. § 1682 (authorizing federal departments and agencies empowered to extend federal financial assistance to education programs or activities to effect compliance with Title IX "by the termination of or refusal to grant or to continue [such] assistance" or "by any other means authorized by law").

[3] *See* https://nces.ed.gov/programs/digest/d24/tables/dt24_203.20.asp. This figure imputes prekindergarten student enrollment.

[4] *See* https://nces.ed.gov/programs/digest/d23/tables/dt23_235.20.asp.

[5] *See* https://www.cde.ca.gov/fg/cr/relieffunds.asp (totaling the California allocation amounts for federal sources of COVID-19 relief).

[6] *See* https://www.ed.gov/laws-and-policy/civil-rights-laws/sex-discrimination/Title-IX-and-Sex-Discrimination ("Title IX applies to schools, local and state educational agencies, and other

California law requires that a student "be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the [student's] records."[7] Pursuant to regulations issued by CDE, "[e]ach school district and county office of education shall have primary responsibility to ensure that its programs and activities are available to all persons" regardless of, among other characteristics, "gender,"[8] which CDE regulations define to include "a person's gender identity."[9] Thus, CDE requires local school districts such as LAUSD, SFUSD, and CUSD to carry out state legal requirements with regard to "gender identity" discrimination. On its website, the agency also posts resources advising school districts to allow students to use sex-separated facilities on the basis of their gender identity and samples school policies that do so.[10]

Recent Title IX Developments

On April 29, 2024, the Department finalized Title IX implementing regulations ("2024 Rule") that prohibited "gender identity" discrimination in federally funded education programs and activities across the country. The agency unlawfully extended the meaning of "discrimination on the basis of sex" in Title IX to include discrimination on the basis of an undefined "gender identity." As a result, the 2024 Rule required public schools to allow any person to use whichever sex-separated bathroom or locker room corresponded with that person's claimed "gender identity."[11]

A slew of federal district courts and courts of appeals across the country blocked the 2024 Rule on the basis that it did not accord with the meaning of Title IX and subverted the original purpose of the law—to guarantee equal opportunities to women and girls in education—by requiring schools to permit males who identify as female to share bathrooms, locker rooms, and other sex-separated

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institutions that receive federal financial assistance from the [U.S.] Department [of Education].").

[7] CAL. ED. CODE § 221.5(f).

[8] CAL. CODE REGS. tit. 5, § 4960(a).

[9] *Id.* § 4910(k).

[10] *See* https://www.cde.ca.gov/ci/pl/c1h.asp (last visited Feb. 26, 2025).

[11] *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474, 33,887 (Apr. 29, 2024) (hereinafter "2024 Rule"); *id.* at 33,818 (denying "a transgender student access to a sex-separate facility or activity consistent with that student's gender identity . . . would violate Title IX's general nondiscrimination mandate").

private facilities with women and girls.[12] On August 16, 2024, a unanimous Supreme Court agreed that a preliminary injunction blocking the "gender identity" provisions of the 2024 Rule was an appropriate measure.[13] On January 9, 2025, the U.S. District Court for the Eastern District of Kentucky vacated the 2024 Rule in full because, among other unlawful aspects of the rule, the regulations misinterpreted the word "sex" in Title IX to apply to "gender identity"[14] and overruled Title IX's explicit recognition that schools may separate certain facilities and programs on the basis of sex in the interest of safety, privacy, and equal opportunity.[15] On February 19, 2025, the U.S. District Court for the Northern District of Texas also vacated the 2024 Rule on many of the same grounds, including that "expanding the meaning of 'on the basis of sex' to include 'gender identity' turns Title IX on its head" and the 2024 Rule's standard forcing schools to allow males to access female bathrooms and other intimate spaces "is arbitrary in the truest sense of the word."[16]

On January 20, 2025, President Trump signed Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* ("EO 14168").[17] In that EO, the president declared that "[i]t is the policy of the United States to recognize two sexes, male and female,"[18] and defined "sex" for the purpose of Executive Branch interpretation and application of federal law as referring "to an individual's immutable biological classification as either male or female."[19] EO 14168 then directs all federal agencies and employees to "enforce laws governing sex-based rights, protections, opportunities, and

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[12] *See Tennessee v. Cardona*, No. 24-5588, 2024 WL 3453880 (6th Cir. July 17, 2024); *Louisiana v. Dep't of Educ.*, No. 24-30399, 2024 WL 3452887 (5th Cir. July 17, 2024); *Oklahoma v. Cardona*, No. CIV-24-00461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. Dep't of Educ.*, No. 4:24-CV-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Carroll Indep. Sch. Dist. v. Dep't of Educ.*, No. 4:24-cv-00461-O, 2024 WL 3381901 (N.D. Tex. July 11, 2024); *Texas v. United States*, No. 2:24-CV-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024); *Kansas v. Dep't of Educ.*, No. 24-4041JWB, 2024 WL 3273285 (D. Kan. July 2, 2024); *Tennessee v. Cardona*, No. 2:24-072-DCR, 2024 WL 3019146 (E.D. Ky. June 17, 2024); *Louisiana v. Dep't of Educ.*, No. 3:24-CV-00563, 2024 WL 2978786 (W.D. La. June 13, 2024).

[13] *Dep't of Educ. v. Louisiana*, No. 24A78, slip op. at 2 (U.S. Aug. 16, 2024).

[14] *Tennessee v. Cardona*, No. 2:24-cv-00072-DCR-CJS, at 4–7 (E.D. Ky. Jan. 9, 2025).

[15] *Id.* at 7–8.

[16] *Carroll Indep. Sch. Dist. v. Dep't of Educ.*, No. 4:24-cv-00461-O, at 5,8 (N.D. Tex. Feb. 19, 2025).

[17] Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

[18] *Id.* at 8615.

[19] *Id.*

accommodations to protect men and women as biologically distinct sexes," giving all instances of "sex" and related terms the definitions set forth in the EO "when interpreting or applying statutes, regulations, or guidance . . . ."[20] Importantly, EO 14168 directs agencies to effect its policies "by taking appropriate action to ensure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity."[21]

In Executive Order 14201 dated February 5, 2025, *Keeping Men Out of Women's Sports* ("EO 14201"),[22] President Trump also directed the Secretary of Education to comply with the federal district court's vacatur of the 2024 Rule "and take other appropriate action to ensure this regulation does not have effect," "take all appropriate action to affirmatively protect all-female athletic opportunities and all-female locker rooms" in line with Title IX, and "prioritize Title IX enforcement actions against educational institutions (including athletic associations composed of or governed by such institutions) that deny female students an equal opportunity to participate in sports and athletic events by requiring them, in the women's category, to compete with or against or to appear unclothed before males."[23] EO 14201 further requires all federal agencies to "review grants to educational programs and, where appropriate, rescind funding to programs that fail to comply with the policy" of not depriving women and girls of "fair athletic opportunities."[24]

In light of the vacatur of the 2024 Rule, and consistent with EO 14168 and EO 14201, the Department's Office for Civil Rights issued a Dear Colleague Letter announcing the Department's intentions with regard to the 2024 Rule ("2025 Title IX DCL"). Dated February 4, 2025, the letter stated that OCR "will enforce Title IX under the provisions of the 2020 Title IX Rule, rather than the 2024 Title IX Rule."[25] Accordingly, the 2025 Title IX DCL explained that "open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule and . . . preexisting regulations . . . ."[26]

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[20] *Id.* at 8616.
[21] *Id.* at 8617.
[22] Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 11, 2025).
[23] *Id.* at 9279.
[24] *Id.* at 9280.
[25] Craig Trainor, Acting Assistant Secretary for Civil Rights, United States Department of Education, Dear Colleague Letter, Feb. 4, 2025, at 1, https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl (footnotes omitted).
[26] *Id.* at 2.

CDE's Response to EOs and Guidance

CDE responded to OCR's guidance with public statements indicating that it plans to change nothing about its "gender identity"-related lodging or intimate facilities access policies. Specifically, the State Superintendent of Public Instruction pointed out that "California law is unaffected by recent changes to federal policy and continues to provide safeguards against discrimination and harassment based on . . . gender identity . . . ."[27] As recently as February 21, 2025, CDE and the State Board of Education issued a joint statement responding to "recent statements and correspondence from federal officials, including the U.S. Department of Education," with the irrelevant assertion that "[f]ederal laws regarding public education remain unchanged, as executive orders and memos cannot modify or override statutory requirements or regulations or unilaterally impose new terms on existing agreements."[28] Their statement ignored the recent federal cases vacating the 2024 Rule and the fact that every court of appeal that has addressed the issue has affirmed orders of preliminary injunction blocking those regulations.

As discussed below, these statements demonstrate that CDE blatantly disregards the import of the federal court decisions enjoining and vacating the 2024 Rule: forcing students or employees to share intimate facilities with members of the opposite sex as a condition of participating in an education program or activity excludes access to and denies the benefits of that program or activity. Any state law to the contrary cannot stand in the way of Title IX's nondiscrimination guarantee.

LAUSD Policies on Access to Sex-Separated Facilities

With an enrollment of just over 400,000 students,[29] LAUSD is the largest school district in California and the second-largest school district in the United States.[30] As a local education agency receiving federal funding, LAUSD is bound by Title IX's prohibition against discrimination on the basis of sex.[31]

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[27] https://www.cde.ca.gov/nr/ne/yr25/yr25rel08.asp.

[28] https://www.cde.ca.gov/nr/ne/yr25/yr25rel13.asp.

[29] https://my.lausd.net/opendata/dashboard?language=en.

[30] https://www.the74million.org/article/after-lausd-enrollment-falls-by-11000-board-president-says-schools-may-close/; https://www.cde.ca.gov/ds/ad/ceflargesmalldist.asp.

[31] *See* 20 U.S.C. § 1681; 34 C.F.R. § 106.2 (defining a "recipient" to include "any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof [or] any public or private agency, institution, or organization . . . to whom Federal financial assistance is extended . . . and which operates an education program or activity which receives such assistance"); 34 C.F.R. § 106.31(a)(1) (generally prohibiting discrimination on the basis of sex in education programs and activities operated by recipients); https://www.ed.gov/laws-and-

In a policy bulletin of August 26, 2024, LAUSD provides that while "[s]chools may maintain separate restroom facilities for male and female students," "[s]tudents shall have access to restrooms that correspond to their gender identity."[32] "Nonbinary" students "should be granted access to the facility which they find best aligns with their gender identity."[33] The same policy—allowing access based on "gender identity"—also applies with respect to access to sex-separated locker rooms.[34]

SFUSD Policies on Access to Sex-Separated Facilities

SFUSD enrolled approximately 50,000 students during the 2024–25 school year[35] and is one of the ten largest school districts in California.[36] As a local education agency receiving federal funding, SFUSD is bound by Title IX's prohibition against discrimination on the basis of sex.[37]

SFUSD Board Policy 5145.3 prohibits discrimination on the basis of "gender identity," among other categories.[38] SFUSD Administrative Regulation 5145.4 ("AR 5145.4") defines a student's "gender identity" as that "student's gender-related identity, appearance, or behavior as determined from the student's internal sense of their gender, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth."[39]

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policy/civil-rights-laws/frequently-asked-questions-sex-discrimination ("All public school districts are covered by Title IX because they receive some federal financial assistance and operate education programs.").

[32] https://www.lausd.org/cms/lib/CA01000043/Centricity/Domain/383/BUL-6224.3%20Gender%20Identity%20and%20Students%20-%20Ensuring%20Equity%20and%20Nondiscrimination.pdf at 9.

[33] *Id.*

[34] *Id.* at 10.

[35] *See* https://dq.cde.ca.gov/dataquest/dqcensus/enrgrdlevels.aspx?agglevel=District&year=2023-24&cds=3868478.

[36] *See* https://www.cde.ca.gov/ds/ad/ceflargesmalldist.asp.

[37] *See supra* note 31.

[38] *See* https://www.sfusd.edu/know-your-rights/discrimination-your-school/board-policy-discrimination-board-policy-51453.

[39] https://www.sfusd.edu/know-your-rights/discrimination-your-school/administrative-regulation-nondiscriminationharassment-intersex-nonbinary-transgender-and-gender.

AR 5145.4 requires that students have access to school facilities, including restrooms and locker rooms, corresponding "to their gender identity as expressed by the student and asserted at school."[40] AR 5145.4 also provides that, "[a]s a general rule, in any other circumstances where students are separated by gender in school activities or programs," explicitly including field trips, "students shall be permitted to participate in accordance with their gender identity as expressed by the student and asserted at school."[41] The regulation purports to allow employees to address "student privacy concerns" on a "case by case basis," but at the same time it prohibits the disclosure of any information about a student's "gender identity" status.[42] Finally, as an example of "prohibited conduct which may constitute sex-based or gender-based harassment," AR 5145.4 includes "[b]locking a student's entry to the restroom or locker room that corresponds to [his or her] gender identity . . . ."[43]

In an apparent response to EO 14168, SFUSD Superintendent Dr. Maria Su sent an email addressed to the "SFUSD Community," entitled "Supporting LGBTQ+ students in SFUSD," stating that "[w]hile it is not yet clear how or when developments at the federal level might inform things here in SFUSD, commitment to our core values *will not change*."[44] The email then lists among "[c]urrent state and local guidance as well as pedagogical best practices" the SFUSD facilities access requirements described above, citing school district regulations and California law.[45] Thus, notwithstanding two federal court rulings wiping the 2024 Rule from the books, a plethora of federal appellate decision enjoining the 2024 Rule, and the 2025 Title IX DCL, SFUSD continues to take the position that forcing students or employees to share intimate facilities with members of the opposite sex as a condition of participating in an education program or activity does not exclude access to or deny the benefits of that program or activity on the basis of sex.

CUSD's Policies on Access to Sex-Separated Facilities

CUSD is the largest school district in Orange County, California, and, with 48,326 students enrolled as of the 2023–24 school year, the tenth-largest school district in the State of California.[46] As a local education agency that receives federal funding, CUSD is bound by Title IX's prohibition against discrimination on the basis of sex.[47]

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[40] *Id.*
[41] *Id.*
[42] *See id.*
[43] *Id.*
[44] https://bsky.app/profile/sockandsandals.bsky.social/post/3lgyowx5lvs2n (emphasis added).
[45] *Id.*
[46] *See* https://www.cde.ca.gov/ds/ad/ceflargesmalldist.asp.
[47] *See supra* note 31.

CUSD maintains a policy prohibiting discrimination on the basis of "gender identity."[48] It provides that "[u]nlawful discrimination . . . includes disparate treatment of students based on [gender identity] with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services."[49]

Established in 2003,[50] the Pali Institute contracts with K–12 schools across southern California to offer an outdoor science education camp at a 250-acre facility for students ranging from fourth graders to high school seniors,[51] including students in CUSD. During their overnight trips to the camp, students stay in lodging that, according to the Pali Institute's website, "sleeps 11 students and one Institute Instructor."[52]

Recently, CUSD sent information to parents of fourth graders to gauge interest in attending overnight programs at the Pali Institute in the 2025–2026 school year. According to the communication, "[d]uring Outdoor Education, at night, students stay in cabins with private showers and bathrooms. The cabins are primarily supervised by Pali staff in the evening."[53]

With regard to student cabin assignments, the communication states that "[s]tudents who attend Outdoor Education have the right to participate, and use facilities, consistent with their gender identity, irrespective of the gender listed on the student's record," citing California state law.[54] With regard to camp staff, the document states that, per California nondiscrimination law, adults must "have access to facilities that align with their gender identity," citing another provision of California law.[55] The document then indicates that parents do not have a right to information about

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[48] *See* https://www.capousd.org/Non-Discrimination-Policy/#:~:text=The%20Capistrano%20Unified%20School%20District,ethnicity%2C%20religion%2C%20sex%2C%20sexual at 1.
[49] *Id.*
[50] *See* https://www.paliinstitute.com/about/impact/.
[51] *See* https://www.paliinstitute.com/parents/faqs/; https://www.paliinstitute.com/program-category/prospective-schools/.
[52] *See* https://www.paliinstitute.com/parents/health-safety/ (embedded video entitled "Sleeping Accommodations").
[53] Additional Information about Pali Institute and District Field Trips (see Appendix for document).
[54] *Supra* note 7.
[55] CAL. CIV. CODE § 51(b), (e)(6) (providing that all persons in the state's jurisdiction are entitled to "full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever," no matter their sex, which the law defines to include their "gender identity").

whether the staff member assigned to their children's cabin is (biologically) male or female; it states that the district can only "clarify that all individuals in the 'female' cabin primarily identify as female, and all individuals in the 'male' cabin primarily identify as male." Any adult staff member who identifies as "non-binary" is required to "select a primary gender for the purpose of use of single-sex facilities."[56]

Thus, not only will students who wish to attend CUSD field trips to the Pali Institute be required to sleep in facilities with other students of the opposite sex, but also adult staff members will be assigned to their cabins on the basis of the sex with which they "identify." And parents have no right to know the sex of such staff members. As the communication offers no opt-out for students or parents who may object to spending the night in the same living space as someone of the opposite sex, any parent or child who objects to such an arrangement presumably has no recourse other than declining to participate in the field trip.

Law

Supremacy Clause and Preemption

The Constitution establishes that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, *any Thing in the Constitution or Laws of any State to the Contrary notwithstanding*."[57]

Consistent with this principle, in its 2020 amendments to Title IX's implementing regulations, the Department explicitly recognized the preemptive effect of the federal civil rights law and its regulatory framework, providing that "[t]o the extent of a conflict between State or local law and [T]itle IX as implemented by" regulatory provisions incorporated by the rule, "the obligation to comply with [such provisions] is not obviated or alleviated by any State or local law."[58] The Department has recently underscored that "[s]tate laws do not override federal antidiscrimination laws," and regardless of state or local laws or policies, education agencies and schools "remain subject to Title IX and its implementing regulations."[59]

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[56] *Id.*

[57] U.S. CONST. art. VI, cl. 2 (emphasis added).

[58] *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30,026, 30,573 (May 19, 2020) (§ 106.6(h)).

[59] https://www.ed.gov/about/news/press-release/office-civil-rights-launches-title-ix-violation-investigations-maine-department-of-education-and-maine-school-district.

Thus, if the requirements of a state law conflict with those of a federal law—such as Title IX—then federal law governs. If Title IX prohibits schools from forcing girls and women to share bathrooms, locker rooms, and showers with boys and men, then the California legislature has no authority to require the contrary.

Title IX and the Meaning of "Sex"

Title IX provides: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance," subject to certain statutory exceptions.[60] The law includes a rule of construction specifying that "nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes."[61] Since the Department of Health, Education, and Welfare issued its first regulations implementing Title IX in 1975, Title IX regulations have permitted recipients of federal education funding to "provide separate, toilet, locker room, and shower facilities on the basis of sex" as long as "such facilities provided for students of one sex" are "comparable to such facilities provided for students of the other sex."[62]

It is beyond serious debate that, as used throughout Title IX, the word "sex" refers to a person's biological sex—male or female—at birth.[63] As the Supreme Court recognized merely a year after Title IX's passage, "[s]ex, like race and origin, is an immutable characteristic determined solely by the accident of birth."[64] Most recently, in denying an application for a stay of two injunctions blocking the Department's 2024 Rule, a *per curiam* opinion of the U.S. Supreme Court confirmed this understanding of Title IX by noting that, "[i]mportantly, all Members of the Court today accept that the plaintiffs [challenging the 2024 Rule] were entitled to preliminary injunctive relief as to

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[60] 20 U.S.C. § 1681(a).
[61] 20 U.S.C. § 1686.
[62] 34 C.F.R. § 106.33.
[63] *See Louisiana v. Dep't of Educ.*, Amended Complaint, No. 3:24-CV-00563-TAD-KDM, at 10 (May 3, 2024) (citing *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality op.); *Sex, Webster's Third New international Dictionary* 2081 (1966) ("one of the two divisions of organic esp. human beings respectively designated male or female"); *Sex, Webster's New World Dictionary* (1972) ("[E]ither of the two divisions, male or female, into which persons, animals, or plants are divided, with reference to their reproductive functions."); *Sex, American Heritage Dictionary* 1187 (1969) ("a. The property or quality by which organisms are classified according to their reproduction functions. b. Either of two divisions, designated *male* and *female*, of this classification.").
[64] *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

three provisions of the rule, including the central provision that newly defines sex discrimination to include discrimination on the basis of sexual orientation and gender identity."[65]

Analysis

CDE's statements since January 20 seek to sidestep the indelible principle set down by the Supremacy Clause by pretending that the Trump Administration's executive orders and OCR's guidance are purporting to *change* Title IX, but that is not so. Rather, EO 14168, EO 14201, and the 2025 Title IX DCL simply recognize that Title IX, since its adoption in 1972, prohibits discrimination only on the basis of sex—binary (male or female) and biological—not "gender identity" and does not permit recipients of federal funding to deny equal opportunities in their education programs or activities on the basis of sex for the purpose of allowing individuals to access whatever facilities they choose based on their asserted "gender identity." Yet this is exactly what CDE, LAUSD, SFUSD, and CUSD have done here.

It should be uncontroversial that requiring a student to sleep in the same bedroom with, undress in the same facilities as, or shower next to a member of the opposite sex deprives that student of educational opportunities because it requires that student to divest himself or herself of the dignity afforded him or her as a male or female human being as a condition of accessing the benefits of that education program or activity.[66] Only by redefining "boy" or "girl" to include people who were not born as a "boy" or "girl," but identify as such, can one pretend that no loss of dignity has occurred in such a situation. But, as a matter of law, any such distinction is inconsequential. Title IX speaks to one's immutable biological sex; it does not contemplate anything like "gender identity" as a fluid concept that may change—and change back, or encompass both sexes, or no sexes, or some concept beyond sex—during one's lifetime. Thus, Title IX requires those institutions that it binds, including CDE, LAUSD, SFUSD, and CUSD, to recognize the dignity of boys and girls in maintaining their privacy. By maintaining policies to the contrary, that is exactly what these entities are refusing to do. A recipient of federal financial assistance cannot demand

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[65] *Dep't of Educ. v. Louisiana*, No. 24A78, slip op. at 2 (U.S. Aug. 16, 2024).

[66] *Cf. United States v. Virginia*, 518 U.S. 515 n.19 (1996) ("Admitting women to VMI would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements . . . ."); *Doe v. Luzerne Cnty.*, 660 F.3d 169, 176–77 (3d Cir. 2011) (recognizing an individual's reasonable expectation of privacy in their partially clothed body exists "particularly while in the presence of members of the opposite sex"); *Brannum v. Overton Cnty. Sch. Bd.*, 516 F.3d 489, 494 (6th Cir. 2008) (explaining that "the constitutional right to privacy . . . includes the right to shield one's body from exposure to viewing by the opposite sex); *Sepulveda v. Ramirez*, 967 F.2d 1413, 1416 (9th Cir. 1992) (finding a parolee has a right not to be observed producing a urine sample by an officer of the opposite sex).

that students disregard their biological sex and related privacy interest in sex-separated lodging or intimate facilities as the price of participation in the recipient's educational program or activity,

California law provides no legal defense to these education entities. CDE and the school districts may argue that Title IX's prohibition of "discrimination on the basis of sex" does nothing to bar them from recognizing additional grounds on which to prohibit discrimination, including "gender identity." But if that argument is at all legitimate, it certainly does not justify the subordination of protections on the basis of sex as required by Title IX to a guarantee of unfettered access to intimate facilities and sleeping quarters on the basis of "gender identity" in education programs or activities.[67] In such a context, allowing access to an individual based on his or her "gender identity," no matter how sincerely asserted, unequivocally conflicts with the privacy interests of individuals to use the restroom, sleep, undress, or shower in the presence only of members of the same sex. California has chosen to make one's "gender identity" superior to sex by requiring that access to restrooms and sleeping quarters be governed by "gender identity" instead of "sex." Title IX, on the other hand, requires that schools not force students or employees to shorn themselves of privacy and dignity—and thus be deprived of equal educational opportunities—by sleeping or undressing in the presence of someone of the opposite sex. California law conflicts with Title IX; therefore, California law must yield.

Through its regulations and policies, CDE is carrying out a state statute that directly conflicts with Title IX's nondiscrimination guarantee. It is not entitled to receive any amount of federal funding if it persists in doing so.

LAUSD and SFUSD are complying with the same California law in the education programs and activities they offer to K–12 students. They continue to adhere to policies that require students to share intimate facilities with individuals of the opposite sex based on an asserted "gender identity"—and, at least in the case of SFUSD, those policies extend to identity-based access to sex-separated bedrooms on field trips. Any reliance on state law to justify these policies is of no import because they violate federal law.

LAUSD and SFUSD are not entitled to receive federal funding for education programs or activities that subordinate sex to "gender identity" and thus violate Title IX by forcing students to share their sex-separated intimate facilities with members of the opposite sex.

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[67] *See Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 814 (11th Cir. 2022) ("Reading 'sex' [in Title IX] to include 'gender identity,' and moving beyond a biological understanding of 'sex,' would provide more protection against discrimination on the basis of transgender status under the statute and its implementing regulations than it would against discrimination on the basis of sex.").

As set out in its communication to the parents of fourth graders, CUSD has clearly included among its requirements for attending summer camp that, as a condition of participating in the field trip, students, nearly all of them minors, must share cabins with other students and adults of the opposite sex. CUSD is also denying parents their constitutionally protected right to direct the upbringing and education of their child by refusing to inform them whether their child is sharing a bedroom with a member of the opposite sex. Any reliance on state law to justify these policies is of no import because they violate federal constitutional and statutory rights.

CUSD is not entitled to receive federal funding for education programs or activities that subordinate sex to "gender identity" or that hide from parents information about the sex of the other students and employees with whom students share lodging and intimate facilities.

Conclusion

Title IX prohibits discrimination on the basis of sex—not "gender identity"—in federally funded education programs and activities. CDE, LAUSD, SFUSD, and CUSD are in violation of Title IX because these entities, by forcing students to share sleeping quarters and intimate facilities with members of the opposite sex as a condition of participation in their education programs and activities, prioritize "gender identity" over sex. Simply put, the "gender identity" policies of CDE and these school districts effectively erase "sex" from Title IX. Accordingly, we urge OCR to investigate the allegations in this complaint and ensure that CDE, LAUSD, SFUSD, and CUSD comply with Title IX at the risk of loss of federal funds, as well as provide other appropriate relief.

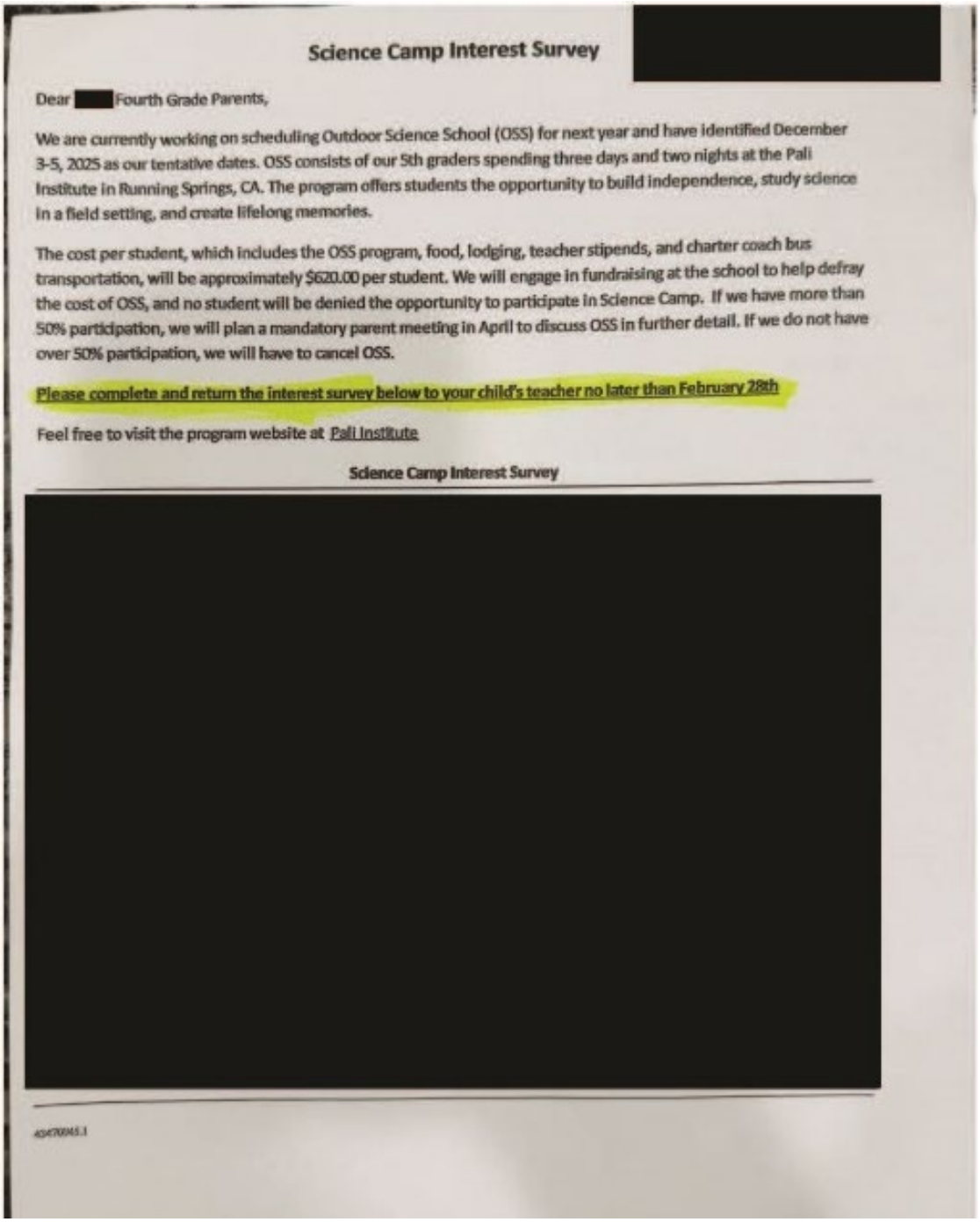
Thank you for your prompt assistance. Please feel free to contact us with any questions related to this request.

Sincerely,

/s/ *Robert S. Eitel*
Robert S. Eitel
President and Co-founder
Defense of Freedom Institute for Policy Studies

/s/ Julie A. Hamill
Julie A. Hamill
President and Principal Attorney
California Justice Center, APC

Appendix: Message from Capistrano Unified School District to Parents of Fourth Graders Regarding Pali Institute and District Field Trips (Page 1 of 2)



Science Camp Interest Survey

[redacted]

Dear [redacted] Fourth Grade Parents,

We are currently working on scheduling Outdoor Science School (OSS) for next year and have identified December 3-5, 2025 as our tentative dates. OSS consists of our 5th graders spending three days and two nights at the Pali Institute in Running Springs, CA. The program offers students the opportunity to build independence, study science in a field setting, and create lifelong memories.

The cost per student, which includes the OSS program, food, lodging, teacher stipends, and charter coach bus transportation, will be approximately $620.00 per student. We will engage in fundraising at the school to help defray the cost of OSS, and no student will be denied the opportunity to participate in Science Camp. If we have more than 50% participation, we will plan a mandatory parent meeting in April to discuss OSS in further detail. If we do not have over 50% participation, we will have to cancel OSS.

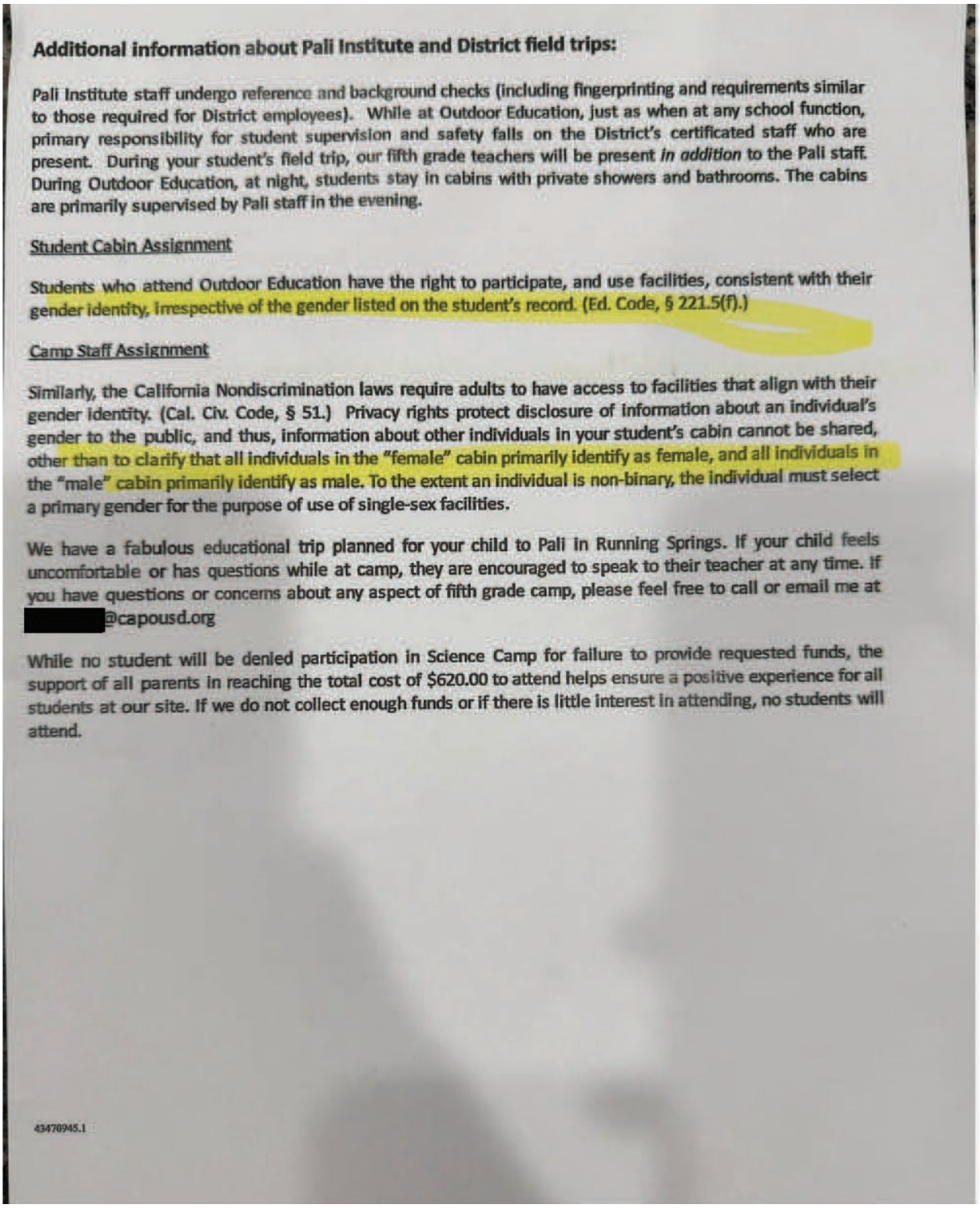
Please complete and return the interest survey below to your child's teacher no later than February 28th

Feel free to visit the program website at Pali Institute

Science Camp Interest Survey

[redacted]

Appendix: Message from Capistrano Unified School District to Parents of Fourth Graders Regarding Pali Institute and District Field Trips (Page 2 of 2)



Additional information about Pali Institute and District field trips:

Pali Institute staff undergo reference and background checks (including fingerprinting and requirements similar to those required for District employees). While at Outdoor Education, just as when at any school function, primary responsibility for student supervision and safety falls on the District's certificated staff who are present. During your student's field trip, our fifth grade teachers will be present *in addition* to the Pali staff. During Outdoor Education, at night, students stay in cabins with private showers and bathrooms. The cabins are primarily supervised by Pali staff in the evening.

Student Cabin Assignment

Students who attend Outdoor Education have the right to participate, and use facilities, consistent with their gender identity, irrespective of the gender listed on the student's record. (Ed. Code, § 221.5(f).)

Camp Staff Assignment

Similarly, the California Nondiscrimination laws require adults to have access to facilities that align with their gender identity. (Cal. Civ. Code, § 51.) Privacy rights protect disclosure of information about an individual's gender to the public, and thus, information about other individuals in your student's cabin cannot be shared, other than to clarify that all individuals in the "female" cabin primarily identify as female, and all individuals in the "male" cabin primarily identify as male. To the extent an individual is non-binary, the individual must select a primary gender for the purpose of use of single-sex facilities.

We have a fabulous educational trip planned for your child to Pali in Running Springs. If your child feels uncomfortable or has questions while at camp, they are encouraged to speak to their teacher at any time. If you have questions or concerns about any aspect of fifth grade camp, please feel free to call or email me at [redacted]@capousd.org

While no student will be denied participation in Science Camp for failure to provide requested funds, the support of all parents in reaching the total cost of $620.00 to attend helps ensure a positive experience for all students at our site. If we do not collect enough funds or if there is little interest in attending, no students will attend.

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