

April 7, 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 Minnesota Department of Education, Minneapolis Public Schools, and Saint Paul Public Schools 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”), the Defense of Freedom Institute for Policy Studies (“DFI”) brings this federal civil rights complaint against the Minnesota Department of Education (“MDE”), Minneapolis Public Schools (“MPS”), and Saint Paul Public Schools (“SPPS”) 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

DFI is a national nonprofit 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.

We request that OCR investigate the policies and actions described below, consider potential sanctions against MDE, MPS, and SPPS as authorized under Title IX,² and place these entities on

¹ 20 U.S.C. §§ 1681 *et seq.*

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”).



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

Minnesota Public Schools and “Gender Identity” Law

Minnesota public K–12 schools enrolled nearly 870,000 students at the start of the 2023–24 school year.³ As of the 2020–21 school year, Minnesota public K–12 schools received almost \$1.5 billion in federal revenue.⁴ Additionally, beginning in March 2020, Congress allocated nearly \$2.7 billion to Minnesota public K–12 schools for the purpose of providing COVID-19 pandemic relief for students.⁵ As a state education agency, MDE is bound by Title IX’s prohibition against discrimination on the basis of sex.⁶

The Minnesota Human Rights Act (“MHRA”) provides as follows:

It is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, *gender identity*, age, marital status, status with regard to public assistance, sexual orientation, or disability, or to fail to ensure physical and program access for disabled persons.⁷

The MHRA defines “gender identity” as “a person’s inherent sense of being a man, woman, both, or neither,” explaining that “[a] person’s gender identity may or may not correspond to their

³ See Table 203.20. *Enrollment in Public Elementary and Secondary Schools, by Region, State, and Jurisdiction: Selected Years, Fall 1990 Through Fall 2023*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/digest/d24/tables/dt24_203.20.asp (last visited Mar. 27, 2025).

⁴ See Table 235.20. *Revenues for Public Elementary and Secondary Schools, by Source of Funds and State or Jurisdiction: School Year 2020–21*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/digest/d23/tables/dt23_235.20.asp (last visited Mar. 27, 2025).

⁵ See Christopher Magan, *How Minnesota Schools Are Spending an Unprecedented \$2.7 Billion in Federal Pandemic Aid*, PIONEER PRESS (Mar. 6, 2023), <https://www.twincities.com/2022/08/20/mn-schools-federal-pandemic-aid/>.

⁶ See *Title IX and Sex Discrimination*, U.S. DEP’T OF EDUC., OFF. FOR C.R., <https://www.ed.gov/laws-and-policy/civil-rights-laws/sex-discrimination/Title-IX-and-Sex-Discrimination> (last visited Mar. 27, 2025) (“Title IX applies to schools, local and state educational agencies, and other institutions that receive federal financial assistance from the [U.S.] Department [of Education].”).

⁷ MINN. STAT. § 363A.13, subd. 1 (emphasis added).



assigned sex at birth or to their primary or secondary sex characteristics. A person’s gender identity is not necessarily visible to others.”⁸

In its September 2020 decision *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*,⁹ the Minnesota Court of Appeals held that a (biologically) female student who identified as a male stated a valid claim that the student’s school had violated the MHRA¹⁰ and the Minnesota Constitution¹¹ by denying the student’s request to access the boys’ locker room.¹² To our knowledge, the Minnesota Supreme Court neither reviewed that decision nor cited it in a subsequent decision.

Six years prior to *Anoka-Hennepin Sch. Dist. No. 11*, the Minnesota Legislature established a School Safety Technical Assistance Council (“Council”) convened by MDE and other state agencies.¹³ In 2017, the Council published a document entitled *A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students* (the “Toolkit”).¹⁴ The Toolkit, which remains available on MDE’s website, includes the following definitions:

- It defines “gender identity” as “an individual’s innate sense of one’s own gender; a deeply held sense of psychological knowledge of one’s own gender, regardless of the gender assigned at birth.”¹⁵

⁸ MINN. STAT. § 363A.03, subd. 50.

⁹ 950 N.W.2d 553 (Ct. of App. Of Mn. 2020).

¹⁰ *Id.* at 562 (“[T]he provision explicitly prohibits discriminating in any manner on the basis of sexual orientation, which includes segregating or separating transgender students.”) (citations omitted). At the time of the decision, the MHRA did not refer to “gender identity” but did refer to discrimination based on sexual orientation, which the law defined to include “having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness.” *See id.* (“[T]he provision explicitly prohibits discriminating in any manner on the basis of sexual orientation, which includes segregating or separating transgender students.”) (citing Minn. Stat. § 363A.13, subd. 1, .03, subds. 13, 44). In 2023, the Minnesota Legislature amended the MHRA to add “gender identity” to the list of protected characteristics and a definition specifically devoted to “gender identity.” 2023 Minn. Laws 2909 (art. 19, §§ 64, 48).

¹¹ MINN. CONST. art. I, § 2 (“No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. . . .”).

¹² *Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d at 566, 572–73.

¹³ MINN. STAT. § 127A.051, subds. 1, 3.

¹⁴ MINN. DEP’T OF EDUC., A TOOLKIT FOR ENSURING SAFE AND SUPPORTIVE SCHOOLS FOR TRANSGENDER AND GENDER NONCONFORMING STUDENTS (rev. Sept. 25, 2017) (hereinafter “TOOLKIT”), available at

https://education.mn.gov/mdeprod/idcplg?IdcService=GET_FILE&dDocName=MDE072543&RevisionSelectionMethod=latestReleased&Rendition=primary.

¹⁵ *Id.* at 1.



- It defines “gender nonconforming” as “people whose gender expression [the external appearance, characteristics or behaviors typically associated with a specific gender] differs from stereotypical expectations, such as ‘feminine’ boys, ‘masculine’ girls, and those who are perceived as androgynous or gender nonbinary.”¹⁶
- It defines “transgender” as “an umbrella term for people whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth.”¹⁷

The Toolkit states that illegal discrimination under the MHRA could include situations where “a student is expressly denied full utilization of a benefit at school, is indirectly denied full utilization of a benefit at school due to a policy, practice or procedure of the school or if a student is exposed to a hostile environment that interferes with the student’s ability to learn or participate in activities at school.”¹⁸

The Council cited an unpersuasive case from another circuit¹⁹ to provide support for the Toolkit’s proposition that “[s]chools should work with transgender and gender nonconforming students to ensure that they are able to access needed facilities in a manner . . . consistent with their gender identity”²⁰ The Toolkit argues that “[t]ransgender and gender nonconforming students should be afforded the opportunity to use the restroom of their choice.”²¹ The Toolkit also extends the language to locker rooms, explaining that “[s]ome transgender and gender nonconforming students may prefer a private space while others may wish to use the locker room consistent with their gender identity”; it recommends that coaches consider how best to use various methods “to provide privacy for all students” in this context.²² For overnight trips, the Toolkit provides that “school officials should allow a transgender or gender nonconforming student the opportunity to room with peers who match the student’s gender identity *unless the transgender or gender nonconforming student requests otherwise.*”²³

According to the Toolkit, “[p]rivacy objections raised by a student in interacting with a transgender or gender nonconforming student may be addressed by *segregating the student raising the objection* provided that the action of the school officials does not result in stigmatizing the

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 4.

¹⁹ *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017).

²⁰ TOOLKIT, *supra* note 14, at 10.

²¹ *Id.*

²² *Id.*

²³ *Id.* (emphasis added).



transgender and gender nonconforming student.”²⁴ Furthermore, with regard to restrooms, the Toolkit states that “[a]ny student who wishes not to share a restroom with a transgender or gender nonconforming student can be provided a private space such as a single-user restroom.”²⁵

MPS Policies on Access to Sex-Separated Facilities

MPS, which enrolled approximately 29,000 students as of the 2024–25 school year,²⁶ is a local education agency receiving federal funding and is thus bound by Title IX’s prohibition against discrimination on the basis of sex.²⁷

In June 2024, the Minneapolis Board of Education (“MPS School Board”) adopted a “Gender Inclusion” policy for MPS purporting to address “the inequities some students, including intersex, transgender, two-spirit, gender expansive, non-binary, and gender-questioning students, confront as they navigate a system designed using a gender binary model.”²⁸ Prior to its adoption, the MPS School Board described the proposed policy as “codif[ying] protections found in statute, regulation, and case law, [*sic*] into MPS policy,” and putting “in one place” many of MPS’s established practices.²⁹ Referring to the U.S. Department of Education’s 2024 Title IX regulations (discussed below), MPS School Board stated that its “Gender Inclusion” policies “will provide a

²⁴ *Id.* (emphasis added).

²⁵ *Id.*

²⁶ See Anthony Lonetree, *For the First Time in Years, Enrollment Rises at Minneapolis and St. Paul Schools*, MINN. STAR TRIB. (Mar. 15, 2025), <https://www.startribune.com/minneapolis-st-paul-school-enrollment-increases/601236788>.

²⁷ 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); *Frequently Asked Questions: Sex Discrimination*, U.S. DEP’T OF EDUC., <https://www.ed.gov/laws-and-policy/civil-rights-laws/frequently-asked-questions-sex-discrimination> (last visited Mar. 27, 2025) (“All public school districts are covered by Title IX because they receive some federal financial assistance and operate education programs.”).

²⁸ *Policies & Regulations, Policy 5025: Gender Inclusion*, MINNEAPOLIS PUB. SCHS., https://mps.municipalcodeonline.com/book?type=policies#name=Policy_5025:_Gender_Inclusion (last visited Mar. 27, 2025) (hereinafter “*Minneapolis Gender Inclusion Policy*”) (Policy 5025(1)).

²⁹ *May 14, 2024 Policy Update*, MINNEAPOLIS PUB. SCHS. (May 19, 2024), <https://www.mpschools.org/about-mps/school-board/post-details/~board/school-board/post/may-14-2024-policy-update>.



governance framework to ensure compliance with these updated rules” upon their effective date of August 1, 2024.³⁰

The policy includes the following definitions:

- It states that “[g]ender” refers to the socially constructed roles, behaviors, activities, and attributes that a given society attaches to femininity or masculinity.”³¹
- It defines “gender identity” as “a person’s deeply held sense or psychological knowledge of their own gender,” specifying that “[a] person’s gender identity can be the same or different from the sex or gender assigned at birth.”³²
- It defines “gender expansive” as “an umbrella term that is used to describe individuals whose gender expression, gender identity, or gender role is fluid and/or may differ from gender norms associated with their sex assigned at birth. This term also includes people who identify outside of traditional gender categories or identify as both or several genders.”³³
- It states that “[t]ransgender/trans” describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.” Identification as “transgender,” which is entirely subjective and in the mind of the individual, does not depend “on medical procedures or other physical changes.”³⁴

The policy provides that “[a]ll students shall have access to gendered facilities and school-sponsored programs that are consistent with the student’s gender identity,” and that “[i]n no case shall any student be required to use a restroom that conflicts with the student’s gender identity.”³⁵ Such facilities include, and are not limited to, “multi-stalled gendered restrooms, locker rooms, and school programs, trips, and athletic programs.”³⁶

With regard to locker rooms, the policy initially states that the use of these facilities “by transgender and gender expansive students shall be assessed on an individualized basis with the goals of maximizing the student’s social integration and equal opportunity to participate in

³⁰ *Id.*

³¹ *Minneapolis Gender Inclusion Policy, supra* note 28 (Policy 5025(2)(a)).

³² *Id.* (Policy 5025(2)(b)).

³³ *Id.* (Policy 5025(2)(e)).

³⁴ *Id.* (Policy 5025(2)(f)).

³⁵ *Id.* (Policy 5025(6)).

³⁶ *Id.*



physical education classes and sports and other school activities, ensuring the student’s comfort, and minimizing stigmatization of the student.”³⁷ Then it provides that, “[u]nless the student requests otherwise, transgender and gender expansive students should have access to the locker room that corresponds to the student’s gender identity asserted at school, like all other students,” and “[i]n no case shall a transgender student be required to use a locker room that conflicts with the student’s gender identity.”³⁸

Importantly, the policy requires no individualized assessment of the privacy or safety interests of any other student who may object to sharing a locker room (or any other intimate facility) with someone of the opposite sex. Instead, the policy forces any student uncomfortable with such an arrangement to use a single-user restroom or a private changing area or use the facility on a different schedule from his or her peers, rather than sharing a sex-separated intimate facility with only members of his or her sex at birth.³⁹

For school trips, MPS policies provide that “[a]ll students shall be permitted to participate in all school trips in a manner that corresponds with [his or her] gender identity. In planning school trips, staff is expected to assess the student’s needs in collaboration with the student and/or the student’s parent(s)/guardian(s) and make reasonable efforts to provide an acceptable accommodation to the student.”⁴⁰

SPPS Policies on Access to Sex-Separated Facilities

SPPS, which enrolled approximately 31,500 students as of the 2024–25 school year,⁴¹ is a local education agency receiving federal funding and is thus bound by Title IX’s prohibition against discrimination on the basis of sex.⁴²

SPPS originally adopted its “Gender Inclusion” policy in 2015 but revised the policy in October 2024 with the stated purpose of “address[ing] the inequities some students, including intersex,

³⁷ *Id.* (Policy 5025(6)(b)).

³⁸ *Id.*

³⁹ *Id.* (Policy 5025(6)(a)(i) (“Any student who has a need or desire for increased privacy, regardless of the student’s gender identity or expression, and regardless of the underlying reason for the student’s need or desire for increased privacy, should be provided access to a single-user restroom.”)); *id.* (Policy 5025(6)(b)(ii) (“Any student who has the need or desire for increased privacy, regardless of the student’s gender identity or expression, and regardless of the underlying reason for the student’s need or desire for increased privacy, should, if possible, be provided with a reasonable alternative changing area such as the use of a private area . . . or with a separate changing schedule”)).

⁴⁰ *Id.* (Policy 5025(8)(a)).

⁴¹ *See* Lonetree, *supra* note 26.

⁴² *See supra* note 27.



transgender, gender fluid, questioning, gender queer, gender diverse, and gender creative students, confront as they navigate a system designed using a cisgender, binary model.”⁴³ In a presentation to the SPPS Board of Education (prior to the policy’s adoption), the Director of the SPPS Office of Equity stated that reasons for updating the policy were to expand it to include staff members and to extend it beyond the “gender binary.”⁴⁴

The policy provides the following definitions:

- “Gender refers to the socially constructed roles, behaviors, activities, and attributes that a given society attaches to femininity or masculinity.”⁴⁵
- “Gender [i]dentity refers to a person’s inherent sense of being a man, woman, both, or neither.” According to the policy, “[a] person’s gender identity may or may not correspond to [his or her] assigned sex at birth or to their primary or secondary sex characteristics. A person’s gender identity is not necessarily visible to others.”⁴⁶
- “Gender [f]luid . . . refers to someone whose gender identity is not fixed and may shift over time.”⁴⁷
- “Questioning . . . refers to someone who has not yet self-identified” his or her “gender identity” or other characteristics.⁴⁸
- “Gender [d]iverse is an umbrella term that refers to someone who identifies and/or expresses themselves outside of the gender binary. Their gender identity and/or expression may not fit neatly into a category based on stereotypical gender constructs.”⁴⁹

⁴³ SAINT PAUL PUB. SCHS., POLICY 500.00: GENDER INCLUSION 1 (rev. Oct. 22, 2024) (hereinafter “SAINT PAUL PUB. SCHS. POLICY 500.00”), *available at* https://resources.finalsite.net/images/v1729710799/sppsgov/fjowv9rxy1tqcrqi2zds/50000GenderInclusionPolicyStudents-FINAL-10_22_24.pdf.

⁴⁴ MYLA POPE, DIR., OFF. OF EQUITY, SAINT PAUL PUB. SCHS., GENDER INCLUSION POLICIES—3RD READING 2 (2024), *available at* https://resources.finalsite.net/images/v1729619357/sppsgov/tekcqkbrw9rwd2tx7jv2/POLICY_GENDERINCLUSION.pdf.

⁴⁵ SAINT PAUL PUB. SCHS. POLICY 500.00, *supra* note 43, at 1.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 2.



- “Gender [c]reative is an umbrella term that refers to someone who is exploring [his or her] gender identity beyond [his or her] assigned gender at birth and/or the gender binary in ways that are authentic to [him or her]. It may also be a term to identify [his or her] gender outside of stereotypical gender constructs.”⁵⁰
- “Gender [q]ueer is an umbrella term that refers to someone who does not follow binary gender norms.”⁵¹
- “Sex refers to a person’s biology and is generally categorized as male, female, or intersex.”⁵²
- “Transgender is an adjective describing persons whose gender identity or expression is different from the sex they were assigned at birth.”⁵³
- “Transitioning refers to the process of someone making changes to live according to [his or her] gender identity,” cautioning that “[t]he process of transitioning . . . may look different for everyone” and “may include a ‘coming out’ period where information is shared with others”⁵⁴

The policy requires SPPS to “[p]rovide all students with access to facilities that best align with students’ gender identity, and/or the facilities the student feels safest accessing.”⁵⁵ Thus, according to the letter of the policy, even if a student is not “gender fluid,” “questioning,” “gender diverse,” “gender creative,” “gender queer,” “transgender,” or “transitioning,” that student may access *any* bathroom if he or she asserts that it is the facility in which he or she feels the “safest.”

Unlike the MPS policies, the policy does not point to any single-user bathroom opt-out for students who might object to sharing intimate facilities with someone of the opposite sex.

In a procedure on “Gender Inclusion” that accompanies this policy—adopted in 2015 and revised most recently in April 2019—SPPS provides that “[s]tudents shall have access to facilities, including but not limited to, [*sic*] restrooms and locker rooms, that best align with a student’s gender as listed on the District’s student information system, as indicated in the facilities field of

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 3.



the system.”⁵⁶ It also states that “[s]tudents shall be roomed on overnight field trips, for which students will be separated based on gender, with other students of their same gender as listed on the District’s student information system.”⁵⁷

In its “Gender Inclusion” policy for staff adopted in October 2024, SPPS requires schools to “[p]rovide all staff with equitable access to facilities that best align with their gender identity, and/or the facilities the staff feels [*sic*] comfortable and safe accessing.”⁵⁸ Just like the student-focused policy, the staff policy thus extends a right to all (adult) employees—beyond those who are “gender fluid,” “questioning,” “gender diverse,” “gender creative,” “gender queer,” “transgender,” or “transitioning”—to use whichever intimate facilities, apparently including facilities used by students, in which they feel “comfortable and safe.”

In its *Rights & Responsibilities Handbook* for the 2024–25 school year, SPPS lists as an example of prohibited “gender identity harassment” the following: “physically barring *or in other ways making it difficult to access facilities consistent with the student’s identity or expression.*”⁵⁹ According to the handbook, such behavior can result in discipline up to and including requiring the school principal “to notify the Office of Security and Emergency Management and make a referral for expulsion to the Superintendent or designee.”⁶⁰

The Rise and Fall of the 2024 Title IX Rule

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

⁵⁶ SAINT PAUL PUB. SCHS., PROCEDURE 500.00.01: GENDER INCLUSION 4–5 (rev. Apr. 17, 2019), available at <https://resources.finalsite.net/images/v1699022994/sppsorg/xavblsnx1ar4waw97u19/5000001genderinclusionproceduresrevised-17-19.pdf>.

⁵⁷ *Id.* at 5.

⁵⁸ SAINT PAUL PUB. SCHS., POLICY 418.00: GENDER INCLUSION—STAFF 2 (2024), available at https://resources.finalsite.net/images/v1731444295/sppsorg/e3w2uchfhyimbli3whxl/RENUMBERED41800GIPolicyStaff-FINAL-10_28_2024.pdf.

⁵⁹ SAINT PAUL PUB. SCHS., RIGHTS & RESPONSIBILITIES HANDBOOK 2024–25, at 38, available at https://docs.google.com/document/d/1M0H_OEldM6g-DzVzXLAuaNThDleSumIT-g1xGfTPbPc/edit?usp=sharing (last visited Mar. 26, 2025).

⁶⁰ *Id.* at 17.



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.”⁶¹

A slew of federal district courts and courts of appeals across the country blocked the 2024 Rule on the basis that it contradicted Title IX and subverted one 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 private facilities with women and girls.⁶² Notably, these decisions included a preliminary injunction issued by the U.S. District Court for the Eastern District of Missouri, which—like the District of Minnesota—is a venue in the Eighth Circuit.⁶³ That decision was based in part on the fact that Title IX’s use of the term “sex” refers to biological sex as one of the principal purposes of the statute was to root out discrimination against women in education” and that the law’s “exceptions explicitly allow discrimination based on biological sex and demonstrate that not all differential treatment based on biological sex is discrimination under Title IX.”⁶⁴ 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.⁶⁵

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”⁶⁶ 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,

⁶¹ *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”).

⁶² 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).

⁶³ *Arkansas v. United States Dep’t of Educ.*, 742 F. Supp. 3d 919 (E.D. Mo. Jul. 24, 2024).

⁶⁴ *Id.* at 941–43 (citing 20 U.S.C. § 1686 (allowing federal funding recipients to maintain “separate living facilities for the different sexes”)).

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

⁶⁶ *Tennessee v. Cardona*, No. 2:24-cv-00072-DCR-CJS, at 4–7 (E.D. Ky. Jan. 9, 2025).



privacy, and equal opportunity.⁶⁷ 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.”⁶⁸

Trump Administration’s Proper Understanding and Enforcement of Title IX

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”).⁶⁹ In that EO, the president declared that “[i]t is the policy of the United States to recognize two sexes, male and female,”⁷⁰ 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.”⁷¹ EO 14168 then directs all federal agencies and employees to “enforce laws governing sex-based rights, protections, opportunities, and 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”⁷² 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.”⁷³

In Executive Order 14201 dated February 5, 2025, *Keeping Men Out of Women’s Sports* (“EO 14201”),⁷⁴ President Trump directed the Secretary of Education to comply with the judicial 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.”⁷⁵ EO 14201 further requires all federal agencies to “review grants to

⁶⁷ *Id.* at 7–8.

⁶⁸ *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, No. 4:24-cv-00461-O, at 5, 8 (N.D. Tex. Feb. 19, 2025).

⁶⁹ Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

⁷⁰ *Id.* at 8615.

⁷¹ *Id.*

⁷² *Id.* at 8616.

⁷³ *Id.* at 8617.

⁷⁴ Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 11, 2025).

⁷⁵ *Id.* at 9279.



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.”⁷⁶

In light of the vacatur of the 2024 Rule, and consistent with EO 14168 and EO 14201, OCR 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.”⁷⁷ 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”⁷⁸

OCR’s Conclusion of Noncompliance with Title IX by MDOE

On March 19, 2025, OCR issued a letter (“March 19 Letter”) to the Commissioner of the Maine Department of Education (“MDOE”) informing her of OCR’s determination that MDOE had not complied with Title IX because public K–12 school districts throughout Maine maintain policies or practices “that allow boys to participate in girls’ athletics programs and/or deny female students access to female-only intimate facilities”⁷⁹

In reaching this conclusion, the March 19 Letter correctly interprets Title IX to prohibit recipients of federal financial assistance from allowing boys or men to access intimate facilities designated for girls and women in their education programs or activities. Pointing to MDOE’s statewide guidance to schools requiring “gender identity”-based participation in school athletics programs and also indicating that “students must be permitted to use the bathroom and other sex-separated facilities in accordance with or corresponding most closely to their gender identity,”⁸⁰ OCR concludes that “Title IX simply does not permit the bait-and-switch of promising female student-athletes a girls’ competition *and a girls’ locker room* while actually permitting males to participate in the activity *or access the space*.”⁸¹ Because MDOE “has elected to direct and advise [school districts] to allow boys and men to participate in sports programs *and access intimate facilities* designated for girls and women,” OCR concluded that the state educational authority did not

⁷⁶ *Id.* at 9280.

⁷⁷ Craig Trainor, Acting Assistant Sec’y for C.R., U.S. Dep’t of Educ., Dear Colleague Letter, Feb. 4, 2025, at 1, <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl> (footnotes omitted).

⁷⁸ *Id.* at 2.

⁷⁹ Letter from Bradley Burke, Reg’l Dir., Off. for C.R., U.S. Dep’t of Educ., to Pender Makin, Comm’r, Me. Dep’t of Educ. 1 (Mar. 19, 2025) (hereinafter “March 19 Letter”), *available at* <https://www.ed.gov/media/document/letter-of-finding-maine-doe-109602.pdf?source=email>.

⁸⁰ *Id.* at 7 (citing *LGBTQ+ School Resources*, ME. DEP’T OF EDUC., <https://www.maine.gov/doe/LGBTQ/staff> (last visited Mar. 21, 2025)).

⁸¹ *Id.* at 8 (emphases added).



comply with Title IX.⁸² The letter states that as long as local school districts maintain policies or practices including “fail[ing] to provide girls with female-only intimate facilities,” they risk their federal funding under the requirements of Title IX.⁸³

Importantly, the fact that MDOE and Maine school districts are arguably carrying out their “gender identity” policies in compliance with provisions of the Maine Human Rights Act (“Maine HRA”) did not absolve them of the responsibility to comply with Title IX. As OCR rightly recognized, Title IX’s implementing regulations provide that “[a] recipient’s obligation to comply with Title IX is not obviated or alleviated by any state or local law.”⁸⁴ Thus, “to the extent that [Maine’s] laws/rules do conflict with Title IX such that MDOE or its school districts cannot comply with State and federal law, MDOE must comply with Title IX if it wishes to continue receiving federal funds.”⁸⁵

Secretary McMahon’s Letter to the Governor of California

According to media reports and a copy of the letter published on X (formerly Twitter) and elsewhere, on March 27, 2025, U.S. Secretary of Education Linda McMahon sent a letter to California Governor Gavin Newsom identifying provisions of California law forcing girls and women to share intimate facilities with biological males and asking him to “commit to working with the legislature to reverse” state laws on this and related issues.⁸⁶ The letter includes the Secretary’s official request of the California governor “to inform this Department whether you will remind schools in California to comply with federal law by protecting sex-separated spaces and activities.”⁸⁷

MDE, MPS, and SPPS’s Continued Subordination of Sex to “Gender Identity”

Rather than heed the plethora of court decisions in the past year recognizing, as the Department and OCR have done, that forcing schools to require girls and women to share intimate facilities with boys and men violates Title IX, MPS and SPPS have shown no indication that they plan to back down from their harmful bathroom and locker room access policies, and the state government has warned school districts that backing off such policies would constitute a violation of the MHRA.

⁸² *Id.* at 9.

⁸³ *Id.*

⁸⁴ *Id.* at 5 (quoting 34 C.F.R. § 106.6(b)).

⁸⁵ *Id.* at 6.

⁸⁶ See Charlie Kirk (@charliekirk11), X (ed. Mar. 27, 2025, 11:18 AM), <https://x.com/charliekirk11/status/1905278307664576715>.

⁸⁷ *Id.*



On January 30, 2025, SPPS issued a press release signed by Interim Superintendent John Thein doubling down on the school district’s “Gender Inclusive” policies described above.⁸⁸ Specifically, the press release notes SPPS’s continued commitment to carrying out “our policies and practices around racial equity, gender inclusion and non-discrimination.”⁸⁹

On February 4, 2025, SPPS issued a fact sheet, entitled *Where We Stand: HUMANIZING THESE TIMES*, that “highlights the policies and practices that are in place to support the safety, belonging, and physical and emotional health of [SPPS] students, staff and families.”⁹⁰ Among the policies highlighted on the fact sheet are the school district’s “Gender Inclusion Policy for Students” and “Gender Inclusion Policy for Staff”⁹¹—both of which, as discussed above, include provisions guaranteeing access to intimate facilities on the basis of “gender identity” instead of sex.

On February 19, 2025, MDE Commissioner Willie Jett issued a letter to “Minnesota Educators and School Leaders” entitled “Reminder about Student Civil Rights.”⁹² That letter requested that teachers and other recipients of the letter “consider” state law prohibiting discrimination on the basis of “gender identity” along with other characteristics.⁹³ It referred teachers and others to the state government’s Toolkit, as discussed above, which directs school employees to allow students to use intimate facilities on the basis of “gender identity” instead of sex.⁹⁴

On February 20, 2025, Minnesota Attorney General Keith Ellison responded to a request from the Minnesota State High School League (“MSHSL”)—a nonprofit association to which school boards may delegate authority over extracurricular activities pursuant to state law⁹⁵—for an advisory opinion on the impacts of President Trump’s EO 14201 on school district and MSHSL policies requiring participation in extracurricular activities on the basis of “gender identity” rather than sex.⁹⁶ The attorney general’s advisory opinion concluded as follows:

⁸⁸ John Thein, Interim Superintendent, *You Belong Here*, SAINT PAUL PUB. SCHS. (Jan. 30, 2025), <https://www.spps.org/news-details/~board/news/post/you-belong-here>.

⁸⁹ *Id.*

⁹⁰ SAINT PAUL PUB. SCHS., *WHERE WE STAND: HUMANIZING THESE TIMES 1* (2025), <https://resources.finalsite.net/images/v1738855775/sppsorg/hwvqritql3k9wzxkdv2l/EquityNon-DiscriminationResources-January2025.pdf>.

⁹¹ *Id.*

⁹² Willie Jett, Comm’r, *Reminder About Student Civil Rights*, MINN. DEP’T OF EDUC. (2025), <https://content.govdelivery.com/accounts/MNMDE/bulletins/3d315be?reqfrom=share>.

⁹³ *Id.*

⁹⁴ *Id.* See TOOLKIT, *supra* note 14, at 10.

⁹⁵ Letter from Keith Ellison, Minn. Att’y Gen., to Erich Martens, Exec. Dir., Minn. State High Sch. League, Feb. 20, 2025, at 1 (hereinafter “Feb. 20 Advisory Opinion”), *available at* <https://www.ag.state.mn.us/Office/Opinions/1035-20250220.pdf>.

⁹⁶ *Id.* at 2.



The Executive Order does not have the force of law and therefore does not preempt any aspect of Minnesota law. Complying with the Executive Order and prohibiting students from participation in extracurricular activities consistent with their gender identity would violate the MHRA.⁹⁷

The advisory opinion comes to this conclusion in part by reasoning that “Title IX does not authorize the President to issue directives with the force of law or to unilaterally rescind all federal funds from all educational programs that do not comply with presidential policy preferences.”⁹⁸ Thus, the letter finds that EO 14201 “does not have the force of law and cannot supersede Minnesota state law.”⁹⁹ The advisory opinion reasons that complying with the executive order—for instance, by “[e]xcluding transgender girl athletes from participating in girls’ extracurricular activities”—“denies those students the full utilization and benefit of educational institutions in violation of the MHRA.”¹⁰⁰ It cites as support for this conclusion the holding of *Anoka-Hennepin Sch. Dist. No. 11* that a “school must permit [a] transgender student to use [a] locker room that aligns with the student’s gender identity under the MHRA.”¹⁰¹ As discussed above, the Minnesota Supreme Court never reviewed or cited this holding of the Minnesota Court of Appeals.

On February 25, 2025, Commissioner Jett issued a separate letter addressed to teachers and “[s]chool [l]eaders” about an OCR Dear Colleague Letter regarding discrimination on the basis of race, color, or national origin.¹⁰² In that letter, Commissioner Jett included a link to the Minnesota Attorney General’s advisory opinion on EO 14201 (discussed above), thus endorsing the conclusions of the letter as a matter of MDE and state government policy on how school districts must carry out their responsibilities under the MHRA.¹⁰³

Neither MPS nor SPPS has revised its “Gender Inclusion” policies (nor announced any plans to do so) requiring access to intimate facilities on the basis of “gender identity” rather than sex despite the recent decisions by the U.S. District Courts for the Eastern District of Missouri and the Northern District of Texas to vacate the 2024 Rule. This decision not to update these policies is notable especially in light of the decision by both of these school districts to update their “Gender Inclusion” policies in close proximity to the effective date of the 2024 Rule—with MPS explicitly citing those new regulations in its justification for updating its policy.¹⁰⁴

⁹⁷ *Id.*

⁹⁸ *Id.* at 3.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 4 (citing *Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d at 562–65).

¹⁰¹ *Id.*

¹⁰² See Press Release, Minn. Dep’t of Educ., Commissioner Jett Shares Update on U.S. Department of Education Dear Colleague Letter (Feb. 25, 2025), available at <https://content.govdelivery.com/accounts/MNMDE/bulletins/3d41d0f>.

¹⁰³ *Id.*

¹⁰⁴ *Supra* note 30.



As discussed below, the failure of either school district to revise its policies in light of the vacatur of the 2024 Rule demonstrate that they are simply violating Title IX, which prohibits school districts from forcing students to share intimate facilities with members of the opposite sex as a condition of participating in an education program or activity. Any state law or local ordinance to the contrary cannot stand in the way of Title IX’s nondiscrimination guarantee.

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.*”¹⁰⁵

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.”¹⁰⁶ 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.”¹⁰⁷

Thus, if the requirements of a state or local 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 Minnesota Legislature has no authority to require the contrary.

¹⁰⁵ U.S. CONST. art. VI, cl. 2 (emphasis added).

¹⁰⁶ U.S. Dep’t of Educ., *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)).

¹⁰⁷ Press Release, U.S. Dep’t of Educ., Office for Civil Rights Launches Title IX Violation Investigations into Maine Department of Education and Maine School District (Feb. 21, 2025), available at <https://www.ed.gov/about/news/press-release/office-civil-rights-launches-title-ix-violation-investigations-maine-department-of-education-and-maine-school-district>.



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.¹⁰⁸ 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.”¹⁰⁹ 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.”¹¹⁰

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.¹¹¹ 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.”¹¹² 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 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.”¹¹³

¹⁰⁸ 20 U.S.C. § 1681(a).

¹⁰⁹ 20 U.S.C. § 1686.

¹¹⁰ 34 C.F.R. § 106.33.

¹¹¹ 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.”)).

¹¹² *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

¹¹³ *Dep’t of Educ. v. Louisiana*, No. 24A78, slip op. at 2 (U.S. Aug. 16, 2024).



Analysis

MDE, MPS, and SPPS “Gender Inclusion” Policies Violate Title IX

Title IX, since its adoption in 1972, prohibits discrimination only on the basis of sex—binary (male or female) and biological—not “gender identity.” It does not permit recipients of federal funding to deny equal opportunities in their education programs or activities on the basis of sex to allow individuals to access whatever facilities they choose based on their asserted “gender identity.” Yet this is exactly what MDE, MPS, and SPPS are doing here.

Requiring a student to undress in the same facilities as or shower or sleep next to a member of the opposite sex deprives that student of educational opportunities because it requires that the student divest himself or herself of the privacy and dignity afforded him or her as a human being as a condition of accessing the benefits of that education program or activity.¹¹⁴ 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 the student has suffered no loss of privacy or dignity in this context. 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. No matter how many different ways MPS or SPPS might characterize the “gender identities” individuals might experience—whether “cisgender,” “transgender,” “non-binary,” “gender-questioning,” “gender fluid,” “gender diverse,” “gender creative,” or “gender queer”—Title IX protects individuals from discrimination on the basis of sex, which has two categories—male and female. Not one of the school districts’ alleged categories of “gender identity” can trump that binary, biologically based paradigm of federal law.

Thus, Title IX requires those institutions that it binds, including MDE, MPS, and SPPS, to recognize the dignity of boys and girls in maintaining their privacy. By implementing policies to the contrary, these entities are subverting the original meaning and purpose of Title IX. A recipient of federal financial assistance cannot demand that students disregard their biological sex and related privacy interest in sex-separated intimate facilities as the price of participation in the recipient’s educational program or activity.

¹¹⁴ 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).



OCR recognized in its March 19 Letter to MDOE that this reading of Title IX represents the proper interpretation of the law’s meaning. As set out in that letter, school districts that receive federal financial assistance cannot maintain policies or practices allowing boys or men—including a male who asserts that his “gender identity” is female—to access school bathrooms, locker rooms, or any other intimate facilities that are designated for females.¹¹⁵ Any policy to the contrary, such as those of MDE, MPS, and SPPS as they purport to carry out the requirements of Minnesota law, discriminates against women and girls by depriving them of equal access to opportunities in education programs and activities and thus violates Title IX.

The March 19 Letter does not directly address lodging arrangements for overnight trips, but OCR’s reasoning for concluding that MDOE’s intimate facilities access policies violate Title IX applies with equal if not greater force in that context. This complaint identifies MDE, MPS, and SPPS policies allowing students to participate in overnight school trips consistent with their “gender identity.”¹¹⁶ These policies—explicitly in the case of MDE and SPPS—require assignment of students to shared bedrooms and other intimate facilities on the basis of “gender identity” rather than sex.¹¹⁷ These policies implicate the same privacy and safety interests at stake in intimate facilities in schools. Title IX does not countenance such discriminatory conditions on participating in school programs or activities, whether in the context of access to campus facilities or to sleeping quarters during overnight trips.

Beyond the fact that these policies facially violate Title IX, the dogmatic method of their implementation is equally concerning and harmful. Each of the policies implemented by MDE, MPS, and SPPS specifically denies that there is *any* objective way to evaluate a person’s assertion of “gender identity” for the purpose of determining whether he or she is entitled to use a particular sex-separated bathroom. “Gender identity,” as defined in these policies, is a wholly subjective concept that cannot be observed by anyone other than the individual claiming the identity.¹¹⁸ Moreover, both MPS and SPPS policies prohibit anyone—including both students and staff members—from denying a person the ability to use the intimate facility that corresponds with his or her gender identity.¹¹⁹ In the case of SPPS, it even characterizes student actions “making it

¹¹⁵ *Supra* note 81.

¹¹⁶ *Supra* notes 23, 40, 57.

¹¹⁷ *Id.* As noted above, MPS policies provide only that “[a]ll students shall be permitted to participate in all school trips in a manner that corresponds with [his or her] gender identity” and requires staff to collaborate “with the student and/or the student’s parent(s)/guardian(s)” to offer “acceptable accommodation[s].” *Supra* note 40. A reasonable interpretation of this policy is that, for overnight school trips, school staff must consult with the student whose “gender identity” does not match his or her sex to determine what sleeping accommodations are “acceptable” and then offer such accommodations.

¹¹⁸ *Supra* notes 15, 32, 46.

¹¹⁹ *Supra* notes 35, 59.



difficult to access” such facilities as “gender identity harassment” punishable by penalties up to and including expulsion.¹²⁰ The subjective nature of “gender identity” and the penalties involved in interfering with access to intimate facilities will likely deter staff members and students from questioning whether a student’s assertion of “gender identity” for the purpose of using such a facility is sincere, contributing further to the safety and privacy risks inherent in these policies.

Minnesota Law Does Not Conflict with Title IX on Its Face

The Minnesota Constitution provides that no individual “shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.”¹²¹ And, as discussed above, the MHRA prohibits discrimination “in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person” on the basis of that person’s “gender identity.”¹²² Neither of these provisions must be read to require that schools allow students, staff members, or any other person to use intimate facilities on the basis of their asserted “gender identity” rather than sex. Requiring use of a bathroom or locker room on the basis of biological sex does not discriminate on the basis of “gender identity” because such a policy does not draw any lines around, or classify individuals on the basis of, “gender identity”: it classifies people on the basis of biological sex. To read the law as MDE, MPS, and SPPS do—to require them to allow anyone to access any intimate facilities he or she wants on the basis of a claimed “gender identity”—reads meaning into the statute that, as a textual matter, does not exist and reflects a policy preference on the part of these institutions that violates federal law.

As the March 19 Letter puts it in the context of the Maine HRA:

Nothing about the plain language of the Maine HRA or Joint Rule requires Maine school districts to let students choose which sex-separated sports team they want to join or which sex-separated intimate facility they want to access. Consistent with the requirements of both Title IX and the Maine HRA, MDOE guidance could instruct [districts] to provide sex-separated sports and intimate facilities while also prohibiting “discrimination based on gender identity” because all students—regardless of expressing a belief about “gender identity”—would have the opportunity to participate in sports and use facilities, on the basis of the objective characteristic of sex. Avoiding “discrimination based on gender identity” does not inherently require an institution to act as though an individual’s “gender identity” beliefs (subjective, mutable feelings) are true or determinative of the individual’s sex (an objective, immutable characteristic).¹²³

¹²⁰ *Supra* notes 59, 60.

¹²¹ *Supra* note 11.

¹²² *Supra* note 7.

¹²³ March 19 Letter, *supra* note 79, at 9.



Thus, “it does not appear that Maine’s laws need to be amended in order to bring MDOE into conformity with the requirements of Title IX and its implementing regulation.”¹²⁴

The same is true in Minnesota, where no legislative action is required to bring education entities into compliance with federal civil rights law. State law, notwithstanding an incorrect intermediate appellate court conclusion never adopted by the state’s highest court, allows MDE, MPS, and SPPS to require that individuals use facilities designated for their sex at birth. These entities have chosen not to do so; therefore, they are not complying with Title IX.

Title IX Overrides Any Contrary Provisions of Minnesota Law

To the extent the MHRA does force schools to allow individuals to access intimate facilities on the basis of “gender identity” rather than sex, that law provides no legal defense to these education entities. MDE, MPS, and SPPS 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 on the basis of “gender identity” in education programs or activities.¹²⁵ 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.

If one accepts the Minnesota Court of Appeals’ interpretation of the Minnesota Constitution and MHRA in *Anoka-Hennepin Sch. Dist. No. 11*,¹²⁶ Minnesota has chosen to make one’s “gender identity” superior to sex by requiring that access to restrooms and locker rooms be governed by “gender identity” instead of “sex.” Title IX, on the other hand, requires that schools not force students or employees to shear 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. This interpretation of Minnesota law conflicts with Title IX; therefore, either the law must yield or Minnesota’s education entities must interpret state law differently to reflect the obligations of federal civil rights law.

¹²⁴ *Id.*

¹²⁵ 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.”).

¹²⁶ *Supra* note 12.



The reasoning of the Minnesota Attorney General’s February advisory opinion effectively ordering school districts to comply with the MHRA instead of heeding the interpretation of Title IX expressed in President Trump’s EO 14201 (as well as other executive orders) is severely misplaced. Far from merely expressing a “presidential policy preference,” EO 14168, EO 14201, the 2025 Title IX DCL, the March 19 Letter, and Secretary McMahon’s March 27 letter reflect what Title IX has required for over 50 years: equal opportunities for every individual regardless of sex in education programs and activities that receive federal financial assistance. Title IX explicitly directs and empowers the Department of Education, along with other federal agencies, to enforce the law’s requirements either by terminating or refusing to grant or continue the financial assistance or “by any other means authorized by law”¹²⁷ Through his executive orders, the president has directed federal agencies to carry out their duties in line with the plain meaning of Title IX—as opposed to the inverted and indefensible interpretation of the law reflected in the 2024 Rule of the previous administration. OCR is now doing just this.

Rather than coercing school districts to comply with his wrongheaded interpretation of the MHRA, the Minnesota Attorney General should instead recognize the import of the sundry federal district court and appellate court decisions blocking and subsequently vacating the 2024 Rule. He should not ignore the *unanimous* ruling by the U.S. Supreme Court approving preliminary injunctions against provisions of the 2024 Rule that forced schools to do *exactly* what the attorney general asserts that the MHRA requires. He should heed the law, not his own policy preferences, and advise schools that separating intimate facilities on the basis of sex complies with both Title IX and the MHRA.

Title IX is the law of the land. Thus, federally funded school districts are subject to the same Title IX obligations no matter the state in which they happen to be located. Where there is a conflict between Title IX and state law, school districts cannot opt to follow the state law and continue to receive federal funding for their education programs and activities. To remedy these violations of federal civil rights law, MDE, MPS, and SPPS must end their policies forcing schools to allow individuals to access sex-separated intimate facilities on the basis of their “gender identity” rather than sex on their campuses and in overnight lodging. Otherwise, they cannot expect to receive federal financial assistance.

Conclusion

Title IX prohibits discrimination on the basis of sex—not “gender identity”—in federally funded education programs and activities. MDE, MPS, and SPPS are in violation of Title IX because these entities, by forcing students to share 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 MDE, MPS, and SPPS effectively erase

¹²⁷ 20 U.S.C. § 1682.



“sex” from Title IX. Accordingly, we urge OCR to investigate the allegations in this complaint and ensure that MDE and the school districts 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/ Paul F. Zimmerman

Paul F. Zimmerman

Senior Counsel, Policy & Regulatory

Defense of Freedom Institute for Policy Studies