

June 24, 2025

*Via Email to [OCR@ed.gov](mailto:OCR@ed.gov)*

U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

*Via Email to [FERPA.Complaints@ed.gov](mailto:FERPA.Complaints@ed.gov)*

U.S. Department of Education  
Student Privacy Policy Office  
400 Maryland Ave, SW  
Washington, DC 20202-8520

**Re: “Gender Identity” Policies and Practices of Shawnee Mission Public Schools USD 512; Olathe Public Schools USD 233; Kansas City, Kansas Public Schools USD 500; and Topeka Public Schools USD 501 in Violation of Title IX and FERPA**

To Whom It May Concern:

The Defense of Freedom Institute for Policy Studies (“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 and the right of parents to inspect, review, and control access to the education records of their minor children.

Pursuant to the discrimination complaint resolution procedures of the U.S. Department of Education’s (“Department”) Office for Civil Rights (“OCR”), DFI brings this federal civil rights complaint against Shawnee Mission Unified School District 512 (“SMSD”); Kansas City, Kansas Public Schools Unified School District 500 (“KCKPS”); and Topeka Public Schools Unified School District 501 (“TPS”) 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”).<sup>1</sup>

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<sup>1</sup> 20 U.S.C. §§ 1681 *et seq.*



This letter also serves to inform the Department’s Student Privacy Policy Office (“SPPO”) about policies of SMSD, Olathe Public Schools Unified School District 233 (“OPS”), KCKPS, and TPS that violate the Family Educational Rights and Privacy Act (“FERPA”)<sup>2</sup> by authorizing their employees to conceal information from parents and disseminate such information among their colleagues regarding requests by their minor children to alter the names and pronouns used by staff to refer to them throughout the school day to align with their “gender identity” rather than their biological sex.

We ask OCR and SPPO to investigate the policies and actions described below, consider potential sanctions against the school districts as authorized under Title IX and FERPA, and place these entities on clear notice that failure to comply with these federal laws in their policies will result in the withdrawal of federal funding.

## **Facts**

### ***SMSD Guidance Regarding “Gender Identity”***

SMSD, which enrolls over 27,000 students, is the third-largest school district in Kansas.<sup>3</sup> It is a local education agency receiving federal funding and is thus bound by Title IX’s prohibition against discrimination on the basis of sex<sup>4</sup> and FERPA’s obligations with regard to access to education records.<sup>5</sup>

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<sup>2</sup> 20 U.S.C. § 1232g.

<sup>3</sup> *About*, SHAWNEE MISSION SCH. DIST., <https://www.smsd.org/about> (last visited June 9, 2025).

<sup>4</sup> *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 June 9, 2025) (“All public school districts are covered by Title IX because they receive some federal financial assistance and operate education programs.”).

<sup>5</sup> *See* 20 U.S.C. § 1232g(a)(3) (“For purposes of this section the term ‘educational agency or institution’ means any public or private agency or institution which is the recipient of funds under any applicable program.”); *To Which Educational Agencies or Institutions Does FERPA Apply?*, U.S. DEP’T OF EDUC., STUDENT PRIVACY POLICY OFFICE, <https://studentprivacy.ed.gov/faq/which-educational-agencies-or-institutions-does-ferpa-apply> (last visited June 9, 2025) (specifying that the definition of an “educational agency or institution” includes public schools and school districts (also known as “local educational agencies,” or “LEAs”)); 20 U.S.C. § 1232g(a)(1)(A) (“No funds shall be made available under any applicable



In October 2024, Jennifer Caedran Sullivan, an English teacher at Shawnee Mission North High School, filed a lawsuit against SMSD asserting that the school district had unlawfully disciplined her for exercising her First Amendment right to oppose its diversity, equity, and inclusion (“DEI”) training sessions and, subsequently, for allegedly referring to a student by the student’s legal name and pronouns reflecting the student’s biological sex instead of that student’s “gender identity.”<sup>6</sup>

Ms. Sullivan’s Complaint alleges that in January 2023, following her objections to the district’s DEI training, SMSD accused her of referring to some students in class using their “dead name and nonpreferred pronouns.”<sup>7</sup> At the time, the Complaint alleges that SMSD “had no policy, practice, or expectations regarding the names or pronouns teachers must use to refer to students,” yet district officials informed Ms. Sullivan that, with respect to future conduct, “[i]t is an expectation that students who have indicated a preferred name and pronoun will be referred to by those preferences.”<sup>8</sup> After an investigation, SMSD disciplined Ms. Sullivan for allegedly using a student’s legal name and “incorrect pronouns” by forcing her to attend a conference and a training and placing a written reprimand in her personnel file.<sup>9</sup>

Ms. Sullivan’s Complaint alleges that, in April 2023, SMSD officials announced at a mandatory professional development session “their policy prohibiting teachers from disclosing to a student’s parents when a student requests pronouns that are divergent from the sex of the student and preventing teachers from disclosing to a student’s parents when a student requests to be called a name that might suggest a divergent gender . . . .”<sup>10</sup> At approximately the same time, SMSD unveiled its “transgender practices and FAQs” (“SMSD Guidance”).<sup>11</sup> Ms. Sullivan’s Complaint notes that SMSD’s policy prohibiting communication with parents on student name and pronoun requests and the SMSD Guidance “are not published Board policy on BoardDocs®. However, [SMSD and its employees] still require Ms. Sullivan to follow them.”<sup>12</sup> After Ms. Sullivan

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program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children.”).

<sup>6</sup> Complaint at 3–4, *Sullivan v. Unified Sch. Dist. 512*, No. 2:24-cv-02491-DDC-BGS (D. Kan. Oct. 28, 2024), available at [https://images.johnsoncountypost.com/wp-content/uploads/2024/11/Jennifer-Caedran-Sullivan\\_Complaint-Filed-1.pdf](https://images.johnsoncountypost.com/wp-content/uploads/2024/11/Jennifer-Caedran-Sullivan_Complaint-Filed-1.pdf).

<sup>7</sup> *Id.* at 27.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 43.

<sup>10</sup> *Id.* at 45.

<sup>11</sup> *Id.* at 46.

<sup>12</sup> *Id.* at 47–48.



publicized these and other district policies in media sources, she states that SMSD retaliated by stripping her of her advanced placement (“AP”) English classes.<sup>13</sup>

A notice on SMSD’s website states that it prohibits discrimination and harassment against any person on the basis of characteristics including “gender identity.”<sup>14</sup> On a separate page that, as recently as June 9, was dedicated to “Diversity, Equity, Inclusion and Belonging,” the school district explains that it “embraces its role in establishing a long-term mission and vision for diversity, equity, and inclusion by relentlessly creating a fully unified, equitable, and inclusive culture.”<sup>15</sup> In recent days, SMSD has revised this page to refer only to “Belonging and Engagement” and to use less-militant language in communicating its plan to create a “unified, equitable, and inclusive culture.”<sup>16</sup>

According to a SMSD spokesperson cited in a local media report in November 2024, “[t]he district has no board policy specific to transgender students, but instead relies on its broader non-discrimination, non-harassment policy and compliance with the federal Title IX law prohibiting discrimination on the basis of sex.”<sup>17</sup> In place of a public-facing policy, it appears that SMSD intends its “gender identity” guidance, which is in the form of frequently asked questions, as a purely internal document setting out the school district’s expectations and practices for employees.<sup>18</sup> Consequently, instead of making the SMSD Guidance available alongside its other policies on the school district website, the district has apparently only shared this document with the public in response to Freedom of Information Act (“FOIA”) requests<sup>19</sup> and with local media,

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<sup>13</sup> Caedran Sullivan, *I Was Forced to Take Action Against My School District to Halt Compelled Speech, Racist DEI*, FOX NEWS (Nov. 6, 2024), <https://www.foxnews.com/opinion/i-forced-take-action-against-my-school-district-halt-compelled-speech-racist-dei>.

<sup>14</sup> *Notice of Non-Discrimination*, SHAWNEE MISSION SCH. DIST., <https://www.smsd.org/about/public-notice/non-discrimination> (last visited June 9, 2025).

<sup>15</sup> *Diversity, Equity, Inclusion and Belonging*, SHAWNEE MISSION SCH. DIST., <https://web.archive.org/web/20250324121709/https://www.smsd.org/families/diversity-and-equity> (catalogued on Wayback Machine Internet Archive). As of June 9, 2025, the web page was entitled “Diversity, Equity, Inclusion and Belonging” and contained the language quoted in the text above.

<sup>16</sup> *Belonging and Engagement*, SHAWNEE MISSION SCH. DIST., <https://www.smsd.org/families/diversity-and-equity> (last visited June 24, 2025).

<sup>17</sup> Roxie Hamill, *Shawnee Mission Teacher Sues District over “Gender Ideology” and Diversity Policies*, JOHNSON CTY. POST (Nov. 18, 2024), available at <https://johnsoncountypost.com/2024/11/18/sullivan-lawsuit-smsd-dei-247258/>.

<sup>18</sup> SHAWNEE MISSION SCH. DIST., TRANSGENDER PRACTICES & FAQ (hereinafter “SMSD Guidance”), available at <https://images.johnsoncountypost.com/wp-content/uploads/2024/11/Transgender-Practices-FAQ.pdf> (last visited June 9, 2025).

<sup>19</sup> See *Shawnee Mission School District Appears to Explain in Guidance that Parents Can Be Left in the Dark Regarding Their Children’s Gender Identity*, DEFENDING EDUC. (June 6, 2023),



including in a news report in November 2024 confirming that SMSD maintained the document to describe “its practices when working with transgender students.”<sup>20</sup>

The SMSD Guidance affirms that the school district’s Board of Education “has not adopted a transgender-specific policy” and states that “[t]he current practice in [SMSD] is for administration to evaluate requests for accommodations on a case-by-case basis.”<sup>21</sup>

Belying this supposed “case-by-case” approach to evaluating student needs, the SMSD Guidance mandates the following rule with regard to intimate facilities at schools:

Transgender and gender expansive students *must* be provided access to facilities (restrooms, locker rooms, or changing rooms) consistent with their gender identity asserted at school. A transgender or gender expansive student may not be required to use a single-gender facility or a facility that conflicts with the student’s gender identity asserted at school. However, schools must provide reasonable alternative arrangements for any student who expresses a need or desire for increased privacy. Reasonable alternative arrangements may include a single occupancy restroom, use of a private area, or a separate changing schedule.<sup>22</sup>

With regard to name and pronoun changes for students, the SMSD Guidance recognizes that a student may only “formalize” a change to his or her preferred name in the district’s Skyward Student Management System—an information management tool used by SMSD to populate personal details in school platforms and systems—when the student’s family completes a “Request to Add a Preferred Student Name in Skyward and Certain Education Records” form.<sup>23</sup> Such family involvement is not required, however, for the student to change the name and pronouns by which he or she is referred at school or for school administrators to inform other staff of such a request by the student. According to the SMSD Guidance:

All students have the right to be addressed by the name and pronouns that correspond to the gender identity they assert at school. School staff and peers are expected to respect a student’s name and pronouns once they have been made aware. The building Administrator, in consultation first with the student, will be

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<https://defendingeduc.org/incidents/shawnee-mission-school-district-appears-to-explain-in-guidance-that-parents-can-be-left-in-the-dark-regarding-their-childrens-gender-identity/> (hereinafter “Defending Educ. SMSD FOIA”).

<sup>20</sup> Hamill, *supra* note 17.

<sup>21</sup> SMSD Guidance, *supra* note 18, at 1.

<sup>22</sup> *Id.* at 3 (emphasis added).

<sup>23</sup> *Id.* at 2.



responsible for ensuring that the student’s request is honored while *working to* engage and include the family.<sup>24</sup>

The SMSD Guidance also responds to a question whether changing a student’s name on his or her diploma is a parental decision. According to the FAQs:

Students who are 18 or older have FERPA rights and can make the decision about what name appears on their diploma. Ideally, any changes will be agreed on by both parents/guardians and students. In the event of a dispute between a parent and student that cannot be resolved, the student’s request will be honored *a) where the student is 18 and/or b) where the student identifies as transgender.*<sup>25</sup>

Thus, according to the guidance, the school district will comply with a minor student’s request to change his or her name on a diploma—even if a parent rejects that request—as long as “the student identifies as transgender.”

### ***OPS Guidance Regarding “Gender Identity”***

OPS, which enrolls approximately 28,200 students, is the second-largest school district in Kansas.<sup>26</sup> It is a local education agency receiving federal funding and is thus bound by Title IX’s prohibition against discrimination on the basis of sex<sup>27</sup> and FERPA’s obligations with regard to access to education records.<sup>28</sup>

In December 2021, OPS shared guidance with its schools regarding how they should respond to a student’s request to change his or her name or gender in school records to align with his or her

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<sup>24</sup> *Id.* at 2 (emphasis added). A previous version of the SMSD Guidance, published by national grassroots organization Defending Education (then “Parents Defending Education”) in June 2023, provided that the administrator will work “to engage and include the family *to the greatest extent possible for support.*” Defending Educ. SMSD FOIA, *supra* note 19 (emphasis added). While the revision is an improvement in that it removes the implication that the administrator should only work with the family if the family is supportive of the name or pronoun change, the continued use of the verb “working” still seems to imply some degree of administrator discretion in the decision whether to involve parents in the decision to change their minor child’s name or pronouns.

<sup>25</sup> SMSD Guidance, *supra* note 18, at 4 (emphasis added).

<sup>26</sup> *District Overview*, OLATHE PUB. SCHS., <https://www.olatheschools.org/domain/46> (last visited June 9, 2025) (enrollment at the beginning of the 2024-25 school year).

<sup>27</sup> See *supra* note 4.

<sup>28</sup> See *supra* note 5.





“gender identity” (“OPS Guidance”).<sup>29</sup> According to a statement from OPS in 2024, like SMSD, the school district “does not have, nor has it ever had, a formal policy adopted by the Board of Education regarding gender identity and pronoun usage.”<sup>30</sup> Rather, the OPS Guidance “references internal administrative guidelines to assist our staff and administrative teams as situations arise on a case-by-case basis, not a formal policy.”<sup>31</sup>

The OPS Guidance states that its purpose is “to help administrators, teaching staff, counselors, social workers, and nurses develop and maintain the strong relationships needed to support our students.”<sup>32</sup> It provides that “[a]dministration and staff must evaluate each student request to go by a preferred name and/or pronoun on a case-by-case basis. It is expected that building principals will acknowledge the student’s request and partner with the student and the family *to the greatest extent possible* in supporting the student’s request, all without causing trauma to the student during the process.”<sup>33</sup>

The document states that “[b]est practice is for staff to obtain parental consent before addressing the student publicly by their preferred name and/or pronoun.”<sup>34</sup> OPS, however, undermines this “best practice” with the following language in the very next paragraph:

Staff must be careful to refrain from incautious disclosure of a student’s gender status and/or sexual orientation. Informing the decision to disclose to a parent/guardian are considerations related to the age of the student; whether the student has developmental disabilities; protecting the privacy interests of the student; whether the communications with the parent would cause trauma to the student, and a fear for the child’s health as a result of that communication.<sup>35</sup>

Thus, far from guiding administrators, teachers, and other employees to share information with the parents of a student who is seeking to transition to a different “gender identity,” the OPS Guidance

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<sup>29</sup> *Olathe Public Schools Has Guidance to Keep the Gender Identity of Students a Secret from Parents*, DEFENDING EDUC. (June 6, 2023), <https://defendinged.org/incidents/olathe-public-schools-has-guidance-to-keep-the-gender-identity-of-students-a-secret-from-parents/>. Defending Education obtained the guidance through a Freedom of Information Act request to OPS. *Id.*

<sup>30</sup> Sarah Motter, *Olathe Schools, ACLU Respond to AG’s Office After Letter Claims Parents Cut out of Decisions*, KCTV 5 (Feb. 8, 2024), <https://www.kctv5.com/2024/02/08/olathe-schools-respond-ags-office-after-letter-claims-parents-cut-out-decisions/>.

<sup>31</sup> *Id.*

<sup>32</sup> OLATHE PUB. SCHS. USD 233, GUIDANCE RELATED TO GENDER IDENTITY 1 (2021) (hereinafter “OPS Guidance”), available at [https://defendinged.org/wp-content/uploads/2023/05/Guidance-Related-to-Gender-Identity\\_12.2.21\\_REV.pdf](https://defendinged.org/wp-content/uploads/2023/05/Guidance-Related-to-Gender-Identity_12.2.21_REV.pdf).

<sup>33</sup> *Id.* (emphasis added).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*



tosses out several unsupported suggestions for relieving staff of the duty to notify parents, such as an unsupported “words-are-violence” contention that the communication alone might cause “trauma” and a legally baseless argument that a minor child’s supposed “privacy interests” somehow overwhelm the constitutional right of parents to control the upbringing of their child (such as by naming him or her) as they see fit.<sup>36</sup>

### ***KCKPS Policies and Guidance Regarding “Gender Identity”***

KCKPS, which enrolls approximately 22,000 students,<sup>37</sup> is a local education agency receiving federal funding and is thus bound by Title IX’s prohibition against discrimination on the basis of sex<sup>38</sup> and FERPA’s obligations with regard to access to education records.<sup>39</sup>

In August 2020, the KCKPS Board of Education adopted a policy prohibiting “discrimination and harassment against students, employees, or others” on bases including “sex/gender (to include orientation, identity or expression.”<sup>40</sup> KCKPS board policies also include prohibition of discrimination against any student based on “sex/gender (to include orientation, identity or expression) . . . in the admission or access to, or treatment in the district’s programs and activities . . . .”<sup>41</sup> KCKPS board policies provide that “unequal treatment in terms of educational programs or opportunities (e.g., discipline, grading, class assignments, testing, internships, *access to facilities*, admission to programs, etc.)” could be considered prohibited discrimination “if based on a protected class” including “gender identity” or “expression.”<sup>42</sup>

As recently as October 6, 2024, KCKPS devoted a section of its website to “Diversity, Equity, and Inclusion,” including resources on “Sexual Orientation & Gender Expression.”<sup>43</sup> Among other

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<sup>36</sup> *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923).

<sup>37</sup> See *About*, KAN. CITY KAN. PUB. SCHS., <https://www.kckschools.org/about> (last visited June 9, 2025).

<sup>38</sup> See *supra* note 4.

<sup>39</sup> See *supra* note 5.

<sup>40</sup> KAN. CITY KAN. PUB. SCHS. BD. OF EDUC., PROHIBITION OF DISCRIMINATION, HARASSMENT, AND RETALIATION (2020), available at <https://go.boarddocs.com/ks/kckps/Board.nsf/goto?open&id=BUFLR4553182>.

<sup>41</sup> KAN. CITY KAN. PUB. SCHS. BD. OF EDUC., COMPLAINTS (rev. 2022), available at <https://go.boarddocs.com/ks/kckps/Board.nsf/goto?open&id=9PCRG86DE498>.

<sup>42</sup> KAN. CITY KAN. PUB. SCHS. BD. OF EDUC., COMPLAINTS (rev. 2022), available at <https://go.boarddocs.com/ks/kckps/Board.nsf/goto?open&id=9PNU8D797083> (emphasis added).

<sup>43</sup> *Sexual Orientation & Gender Expression*, KAN. CITY KAN. PUB. SCHS. (Oct. 6, 2024), <https://web.archive.org/web/20241006224745/https://www.kckschools.org/diversity-equity-and-inclusion/sexual-orientation-gender-expression> (catalogued on Wayback Machine Internet Archive).





terms, that page defined “gender identity,” “gender expression,” and “trans/transgender,”<sup>44</sup> and it directed readers to the Human Rights Campaign website for “many more terms and vocabulary used by the LGBTQIA+ community.”<sup>45</sup> This “Diversity, Equity and Inclusion” resource is no longer accessible on the KCKPS website.<sup>46</sup>

KCKPS has developed a document—most recently revised in October 2016—entitled “Guidelines for Transgender and Gender Non-Conforming Students at School” (“KCKPS Guidelines”).<sup>47</sup> Tellingly, KCKPS does not maintain this document on its school district website or even alongside its school board policies; instead, the KCKPS Board of Education (“KCKPS Board”) has buried this document on its webpage hosted by BoardDocs® among several documents associated with a September 18, 2017, meeting of the Board.<sup>48</sup> KCKPS’s then Superintendent of Schools Dr. Cynthia Lane presented this document to the KCKPS Board at that meeting as part of the board’s discussion of “the District Plan for supporting our Transgender and Gender Non-Conforming Students,”<sup>49</sup> part of “a comprehensive plan” developed by the Kansas City, Kansas Professional Workforce Development Department and the University of Missouri-Kansas City “to support our transgender and gender non-conforming students in our district.”<sup>50</sup>

The KCKPS Guidelines explain:

The purpose of this regulation is to create a safe learning environment for all students by providing guidelines for schools and district staff to address the needs of transgender and gender nonconforming students. . . . In all cases, the goal is to ensure the safety, comfort, and healthy development *of the transgender or gender*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Diversity, Equity, and Inclusion*, KAN. CITY KAN. PUB. SCHS., <https://www.kckschools.org/diversity-equity-and-inclusion/> (last accessed June 20, 2025) (displaying a “404—Page Not Found” error code).

<sup>47</sup> KAN. CITY KAN. PUB. SCHS., KANSAS CITY KANSAS PUBLIC SCHOOLS GUIDELINES FOR TRANSGENDER AND GENDER NON-CONFORMING STUDENTS AT SCHOOL (rev. 2016) (hereinafter “KCKPS Guidelines”), available at [https://go.boarddocs.com/ks/kckps/Board.nsf/files/AR8NN95EEAD2/\\$file/District%20Transgender%20Guidelines.6.7.17.pdf](https://go.boarddocs.com/ks/kckps/Board.nsf/files/AR8NN95EEAD2/$file/District%20Transgender%20Guidelines.6.7.17.pdf).

<sup>48</sup> *Agenda Item Details, Sep 18, 2017 – Special Meeting Agenda, Reports of the Superintendent*, KAN. CITY KAN. PUB. SCHS. BD. OF EDUC., available at <https://go.boarddocs.com/ks/kckps/Board.nsf/goto?open&id=AR8NFK5E2C77>.

<sup>49</sup> Memorandum from Dr. Cynthia Lane, Superintendent of Schs., Kan. City Kan. Pub. Schs., to Kan. City Kan. Bd. of Educ. (Sept. 18, 2017), available at [https://go.boarddocs.com/ks/kckps/Board.nsf/files/AR8NP45F4208/\\$file/Transgender%20and%20Gender%20Non-Comforming%20Students%20memo%20091817.pdf](https://go.boarddocs.com/ks/kckps/Board.nsf/files/AR8NP45F4208/$file/Transgender%20and%20Gender%20Non-Comforming%20Students%20memo%20091817.pdf).

<sup>50</sup> *Id.*



*nonconforming student* while maximizing the student's social integration and minimizing stigmatization of the student.<sup>51</sup>

The KCKPS Guidelines contain the following definitions:

- “‘Gender identity’ is a person’s deeply held sense or psychological knowledge of his or her own gender, regardless of the gender they were assigned at birth. Everyone has a gender identity.
- “‘Transgender’ describes people whose gender identity is different from their gender assigned at birth.
- “‘Gender expression’ refers to the way a person expresses gender, such as clothing, hairstyles, activities, or mannerisms.
- “‘Gender nonconforming’ describes people whose gender expression differs from stereotypical expectations, such as ‘feminine’ boys, ‘masculine’ girls, and those who are perceived as androgynous.”<sup>52</sup>

The KCKPS Guidelines provide that “[s]tudents shall have access to the restroom that corresponds to their gender identity consistently asserted at school.”<sup>53</sup> As for locker rooms, the KCKPS Guidelines provide that “[t]he use of locker rooms by transgender students shall be assessed on a case-by-case basis with the goals of maximizing *the student’s* social integration and equal opportunity to participate in physical education classes and sports, ensuring *the student’s* safety and comfort, and minimizing stigmatization of *the student*.”<sup>54</sup> The document then clarifies that, “[i]n most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.”<sup>55</sup>

Importantly, the KCKPS Guidelines require 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 guidance 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.<sup>56</sup>

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<sup>51</sup> KCKPS Guidelines, *supra* note 47, at 1 (emphasis added).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 3.

<sup>54</sup> *Id.* (emphases added).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*



The KCKPS Guidelines also include sweeping provisions on “the right to keep private one’s transgender status or gender nonconforming presentation at school” that explicitly and intentionally interfere with the right of parents to access their minor children’s education records. According to the policy, “[s]chool personnel should not disclose information that may reveal a student’s transgender status or gender nonconforming presentation to others, *including parents* and other school personnel, unless legally required to do so or unless the student has authorized such disclosure.”<sup>57</sup> In the dubious interest of not “outing” the student to his or her parents without the student’s consent, the document provides that “[w]hen contacting the parent or guardian of a transgender or gender nonconforming student, school personnel should use the student’s legal name and the pronoun corresponding to the student’s gender assigned at birth unless the student, parent, or guardian has specified otherwise.”<sup>58</sup>

The KCKPS Guidelines explain that the school district “is required to maintain a mandatory permanent pupil record . . . that includes a student’s legal name and legal gender.”<sup>59</sup> Under the regulation’s policies, KCKPS amends this “official record” for the purpose of “reflect[ing] a change in legal name or legal gender upon receipt of documentation that such change has been made pursuant to a court order.”<sup>60</sup> Notably, outside of the school district’s official records, the KCKPS Guidelines provide that school records “may be amended to reflect the student’s preferred name and gender identity.”<sup>61</sup>

Even without a change to the school’s official records, “[a] student has the right to be addressed by a name and pronoun that corresponds to the student’s gender identity,” and “[t]he intentional and persistent refusal to respect a student’s gender identity” by, for instance, not referring to a student’s by his or her chosen name or pronouns, “is a violation of these guidelines.”<sup>62</sup> For a KCKPS student in nearly any grade level, engaging in such “harassment” banned by the guidelines is classified as an offense that “seriously jeopardize[s] school order and security” and can result in discipline up to and including out-of-school suspension.<sup>63</sup> For a teacher, it appears that the KCKPS Board of Education could consider such “harassment” to be just cause for his or her termination.<sup>64</sup>

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<sup>57</sup> *Id.* at 2 (emphasis added).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Student Code of Conduct*, KAN. CITY KAN. PUB. SCHS., <https://www.kckschools.org/families-students/student-code-of-conduct> (last visited June 9, 2025) (“Class III Definitions, Explanations and Resolutions”).

<sup>64</sup> *Article VIII: Suspension, Nonrenewal, Termination*, KAN. CITY KAN. PUB. SCHS., <https://www.kckschools.org/hr/2024-25-negotiated-agreement/article-viii> (last visited June 9, 2025) (“For just cause, the Board may terminate any teacher's contract or non-renew a non-



The KCKPS Board's documents for its meeting on September 18, 2017, also included a PowerPoint training developed by KCKPS's then Director of Professional Workforce Development Shelly Beech and University of Missouri-Kansas City School Counseling Coordinator and Associate Teaching Professor Deb Woodard ("KCKPS Training").<sup>65</sup> The KCKPS Training describes the KCKPS Guidelines in detail<sup>66</sup> and, as discussed below, supplements those guidelines by offering further guidance to school district employees relating to KCKPS's practices and procedures regarding "gender identity." The KCKPS Training indicates that, since April 2016, the authors of the presentation have presented on the district's "gender identity" policies at 14 professional development sessions targeting KCKPS administrators, counselors, social workers and psychologists, and high school and middle school staff and possibly students, with at least two additional sessions to be scheduled as of the date of the KCKPS Training.<sup>67</sup>

To explain the supposed need for the district's policies, the KCKPS Training includes a graphic from "Trans Student Educational Resources" using a "Gender Unicorn" showing continua of "Gender Identity" representing female and male identities along with "Other Gender(s)."<sup>68</sup> Many of the KCKPS Training's definitions for concepts related to "gender identity" are similar to the corresponding definitions in the KCKPS Guidelines, but its definition of "[g]ender transition," which follows, is of note for its disturbing effort to normalize the permanent medical consequences of gender ideology for young people:

Gender transition[:] The process by which some people strive to more closely align their internal knowledge of gender with its outward appearance. Some people socially transition, whereby they might begin dressing, using names and pronouns and/or be socially recognized as another gender. Others undergo physical transitions in which they modify their bodies through medical interventions. For our young people, this will most likely be primarily social, followed by some medical interventions that would relate to changes in hormones through puberty.<sup>69</sup>

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probationary teacher's contract. Just cause is defined as any reason put forward by the administration or Board in good faith and which is not arbitrary, irrational, unreasonable or irrelevant to the district's right to maintain and operate an efficient school system.").

<sup>65</sup> SHELLY BEECH & DEB WOODARD, MEETING THE NEEDS OF OUR GENDER NON-CONFORMING AND TRANSGENDER STUDENTS: CREATING EQUITY THROUGH POLICY CHANGE AND PROFESSIONAL DEVELOPMENT 1,

[https://go.boarddocs.com/ks/kckps/Board.nsf/files/AR8NGT5E9F11/\\$file/Training%20for%20Board%20091817.pdf](https://go.boarddocs.com/ks/kckps/Board.nsf/files/AR8NGT5E9F11/$file/Training%20for%20Board%20091817.pdf) (last visited June 9, 2025).

<sup>66</sup> *Id.* at 41–47.

<sup>67</sup> *Id.* at 40.

<sup>68</sup> *Id.* at 12.

<sup>69</sup> *Id.* at 18.



On a slide labeled “Suggestions from a Parent of a Gender Non-Conforming Child,” the KCKPS Training states that schools should “[a]llow children to use the locker rooms and restrooms that match their gender identity or change in a gender-neutral location (an office, unisex bathroom) if they request it . . . but don’t require trans kids use [*sic*] gender neutral bathrooms or spaces if they do identify as a trans boy or trans girl.”<sup>70</sup>

On portions of the presentation related to “Suggestions for Acknowledging a Student Disclosure of Gender Non-conformity,” the KCKPS Training advises the audience to “[a]ssure and respect confidentiality”<sup>71</sup> and to “[b]e prepared to contact your *school counselor*.”<sup>72</sup> The training explains: “It is important to remember that the student’s family may not be aware or accepting and may need help with this. *Don’t try to handle it on your own.*”<sup>73</sup> The following slide asks, “*Why is it so important not to contact a family who may not be aware?*”<sup>74</sup> The presentation offers no answer to that question.

The KCKPS Training explains that accommodations related to access to restrooms, locker rooms, P.E. classes, and interscholastic competitive sports teams “will be outlined in the student’s individual transition or support plan,”<sup>75</sup> a document that school district employees should develop with the student and, “if possible,” a parent of the student.<sup>76</sup>

Another document included in conjunction with the KCKPS Board meeting on September 18, 2017, is a “Glossary of Terms” related to “gender identity” produced by the Human Rights Campaign.<sup>77</sup> The glossary defines terms including “androgynous,” “cisgender,” “gender-expansive,” “gender non-conforming,” “genderqueer,” “questioning,” and “transgender.”<sup>78</sup> The glossary also contains the following detailed definition of “Genderfluid” (attributed to “Nonbinary.org”) that is particularly notable for its rejection of the binary and objectively biological meaning of “sex” in Title IX (discussed below):

*Genderfluid* aka *Gender-fluid*, *Gender Fluid*, or *Fluid Gender* is an identity under the multigender, nonbinary, and transgender umbrellas. Genderfluid individuals have different gender identities at different times. A genderfluid individual's gender

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<sup>70</sup> *Id.* at 35.

<sup>71</sup> *Id.* at 37.

<sup>72</sup> *Id.* at 38 (emphasis in original).

<sup>73</sup> *Id.* (emphasis in original).

<sup>74</sup> *Id.* at 39 (emphasis in original).

<sup>75</sup> *Id.* at 46.

<sup>76</sup> *Id.* at 47.

<sup>77</sup> GLOSSARY OF TERMS: HUMAN RIGHTS CAMPAIGN 1, [https://go.boarddocs.com/ks/kckps/Board.nsf/files/AR8NMR5EC900/\\$file/Glossary of Terms.pdf](https://go.boarddocs.com/ks/kckps/Board.nsf/files/AR8NMR5EC900/$file/Glossary%20of%20Terms.pdf) (last visited June 9, 2025).

<sup>78</sup> *Id.* at 1–2.



identity could be multiple genders at once, and then switch to none at all, or move between single gender identities. For some genderfluid people, these changes happen as often as several times a day, and for others, monthly, or less often. Some genderfluid people regularly move between only a few specific genders, perhaps as few as two (which is one of the meanings of the label bigender), whereas other genderfluid people never know what they'll feel like next. To be easy to read, this article uses the word “genderfluid” for all people who experience fluid gender. Some people who experience fluid gender don't use the word “genderfluid” for themselves. Some people with fluid genders call themselves by a word such as genderqueer, bigender, multigender, polygender, or other words. This can be because the people haven't seen the word “genderfluid,” or it can be because they don't think it describes them well. It's important to understand that each person has the right to decide what to call their gender identity, and that they're the only one who can do that.<sup>79</sup>

The glossary then includes a definition of “GenderFluid” from *The Urban Dictionary* that generally tracks the definition above, offering the following sentences as an example of the correct usage of the term: “Eri identified as a boy last week, a girl yesterday and is agender today. This makes them genderfluid.”<sup>80</sup>

Finally, the resources compiled for the September 18, 2017, KCKPS Board meeting include a graphic entitled “The Genderbread Person” created by It's Pronounced Metrosexual<sup>81</sup>—a self-described “free online resource for social justice, gender, and sexuality.”<sup>82</sup> According to the graphic:

Gender is one of those things everyone thinks they understand, but most people don't. Like *Inception*. Gender isn't binary. It's not either/or. In many cases it's both/and. A bit of this, a dash of that. This tasty little guide is meant to be an appetizer for gender understanding.<sup>83</sup>

Like the “Gender Unicorn” graphic described above, the “Genderbread Person” graphic contains a set of continua representing “gender identity” and “gender expression” and encourages users to

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<sup>79</sup> *Id.* at 3 (emphases in original).

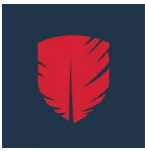
<sup>80</sup> *Id.*

<sup>81</sup> IT'S PRONOUNCED METROSEXUAL, THE GENDERBREAD PERSON V3.3 (hereinafter “Genderbread Person”), [https://go.boarddocs.com/ks/kckps/Board.nsf/files/AR8NN65EE57E/\\$file/Genderbread-Person.pdf](https://go.boarddocs.com/ks/kckps/Board.nsf/files/AR8NN65EE57E/$file/Genderbread-Person.pdf) (last visited June 9, 2025).

<sup>82</sup> *About*, IT'S PRONOUNCED METROSEXUAL, <https://www.itspronouncedmetrosexual.com/about/> (last visited June 9, 2025).

<sup>83</sup> Genderbread Person, *supra* note 81, at 1.





“[p]ut a point on both continua in each category to represent your identity; combine all ingredients to form your Genderbread.”<sup>84</sup>

### ***TPS Guidance Regarding “Gender Identity”***

TPS, which enrolled nearly 12,800 students during the 2023–24 school year,<sup>85</sup> is a local education agency receiving federal funding and is thus bound by Title IX’s prohibition against discrimination on the basis of sex<sup>86</sup> and FERPA’s obligations with regard to access to education records.<sup>87</sup>

TPS Policy 8100 provides that “[n]o person shall be subjected to unlawful discrimination as prohibited by the laws of the state of Kansas and the United States,” which it defines to include discrimination on the basis of “gender identity or expression.”<sup>88</sup>

TPS Regulation Number 8100-03, entitled “Guidelines for Transgender Students at School” and last revised in June 2018 (“TPS Regulation”), states as follows:

The purpose of this regulation is to create a safe learning environment for all students by providing guidelines for schools and district staff to address the needs of transgender and gender nonconforming students. . . . In all cases, the goal is to ensure the safety, comfort, and healthy development of *the transgender or gender nonconforming student* while maximizing the student’s social integration and minimizing stigmatization of the student.<sup>89</sup>

The TPS Regulation includes the following definitions:

- “‘Gender identity’ is a person’s deeply held sense or psychological knowledge of their own gender, regardless of the gender they were assigned at birth. Everyone has a gender identity.

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<sup>84</sup> *Id.*

<sup>85</sup> See *Fact Sheet*, TOPEKA PUB. SCHS., [https://www.topekapublicschools.net/about\\_us/fact\\_sheet](https://www.topekapublicschools.net/about_us/fact_sheet) (last visited June 9, 2025).

<sup>86</sup> See *supra* note 4.

<sup>87</sup> See *supra* note 5.

<sup>88</sup> TOPEKA PUB. SCHS., NONDISCRIMINATION 1 (rev. 2018), available at [https://cdnsm5-ss11.sharpschool.com/UserFiles/Servers/Server\\_8252759/File/About%20Us/Policies%20and%20Regulations/8000%20-%20Students/8100%20-%20Nondiscrimination.pdf](https://cdnsm5-ss11.sharpschool.com/UserFiles/Servers/Server_8252759/File/About%20Us/Policies%20and%20Regulations/8000%20-%20Students/8100%20-%20Nondiscrimination.pdf).

<sup>89</sup> TOPEKA PUB. SCHS., GUIDELINES FOR TRANSGENDER STUDENTS AT SCHOOL 1 (rev. 2018), available at [https://cdnsm5-ss11.sharpschool.com/UserFiles/Servers/Server\\_8252759/File/About%20Us/Policies%20and%20Regulations/8000%20-%20Students/Reg%208100-03%20-%20Guidelines%20for%20Transgender%20Students%20at%20School.pdf](https://cdnsm5-ss11.sharpschool.com/UserFiles/Servers/Server_8252759/File/About%20Us/Policies%20and%20Regulations/8000%20-%20Students/Reg%208100-03%20-%20Guidelines%20for%20Transgender%20Students%20at%20School.pdf) (emphasis added).



- “‘Transgender’ describes people whose gender identity is different from their gender assigned at birth.
- “‘Gender expression’ refers to the way a person expresses gender, such as clothing, hairstyles, activities, or mannerisms.
- “‘Gender nonconforming’ describes people whose gender expression differs from stereotypical expectations, such as ‘feminine’ boys, ‘masculine’ girls, and those who are perceived as androgynous.”<sup>90</sup>

The TPS Regulation provides that “[s]tudents shall have access to the restroom that corresponds to their gender identity consistently asserted at school.”<sup>91</sup> As for locker rooms, the TPS Regulation provides that “[t]he use of locker rooms by transgender students shall be assessed on a case-by-case basis with the goals of maximizing *the student’s* social integration and equal opportunity to participate in physical education classes and sports, ensuring *the student’s* safety and comfort, and minimizing stigmatization of *the student*.”<sup>92</sup> The document then clarifies that, “[i]n most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.”<sup>93</sup>

Like the KCKPS Guidelines, the TPS Regulation forces any student uncomfortable with sharing a sex-separated restroom or locker room with a member of the opposite sex to use a single-user restroom or a private changing area or use the facility on a different schedule from his or her peers.<sup>94</sup>

The TPS Regulation also interferes with the right of parents to access their minor children’s education records. According to the policy, “[s]chool personnel should not disclose information that may reveal a student’s transgender status or gender nonconforming presentation to others, *including parents* and other school personnel, unless legally required to do so or unless the student has authorized such disclosure.”<sup>95</sup> The document provides that “[w]hen contacting the parent or guardian of a transgender or gender nonconforming student, school personnel should use the student’s legal name and the pronoun corresponding to the student’s gender assigned at birth unless the student, parent, or guardian has specified otherwise.”<sup>96</sup>

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 3.

<sup>92</sup> *Id.* (emphases added).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 2 (emphasis added).

<sup>96</sup> *Id.*



The TPS Regulation explains that the school district “is required to maintain a mandatory permanent pupil record . . . that includes a student’s legal name and legal gender.”<sup>97</sup> Under the regulation’s policies, TPS amends this “official record” for the purpose of “reflect[ing] a change in legal name or legal gender upon receipt of documentation that such change has been made pursuant to a court order.”<sup>98</sup> Notably, outside of the school district’s official records, the TPS Regulation provides that school records “may be amended to reflect the student’s preferred name and gender identity.”<sup>99</sup>

Even without a change to the school’s official records, the TPS Regulation provides that “[a] student has the right to be addressed by a name and pronoun that corresponds to the student’s gender identity,” and “[t]he intentional and persistent refusal to respect a student’s gender identity” by, for instance, not referring to a student’s by his or her chosen name or pronouns, “is a violation” of the regulation.<sup>100</sup> The TPS Code of Student Conduct provides that “[d]iscriminatory [h]arassment” is subject to discipline up to and including “[e]xtended term suspension or expulsion and referral . . . .”<sup>101</sup> For a teacher, failing to comply with the TPS Regulation could be grounds for immediate termination.<sup>102</sup>

### ***Kansas Attorney General’s Scrutiny of School Districts***

In December 2023, Kansas Attorney General Kris Kobach issued letters to six Kansas school districts—including SMSD, OPS, KCKPS, and TPS—and the Kansas Association of School Boards, which drafts policy documents for member school boards and which the letter identified as the likely author of the “highly similar” guidance on “gender identity” in each school district.<sup>103</sup>

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> TOPEKA PUB. SCHS., CODE OF STUDENT CONDUCT, 2020–21, at 12, *available at* [https://cdns5-](https://cdns5-ss11.sharpschool.com/UserFiles/Servers/Server_8252759/File/Departments/Student Services/Student Code of Conduct/Code of Student Conduct 2020-21.pdf)

[ss11.sharpschool.com/UserFiles/Servers/Server\\_8252759/File/Departments/Student Services/Student Code of Conduct/Code of Student Conduct 2020-21.pdf](https://cdns5-ss11.sharpschool.com/UserFiles/Servers/Server_8252759/File/Departments/Student Services/Student Code of Conduct/Code of Student Conduct 2020-21.pdf).

<sup>102</sup> TOPEKA PUB. SCHS., PROFESSIONAL AGREEMENT BETWEEN BOARD OF EDUCATION, TOPEKA PUBLIC SCHOOLS, UNIFIED SCHOOL DISTRICT NO. 501, AND NEA-TOPEKA, INC. 27 (2024), *available at* [https://cdns5-ss11.sharpschool.com/UserFiles/Servers/Server\\_8252759/File/2024-25%20Prof%20Agreement%20\(1\).pdf](https://cdns5-ss11.sharpschool.com/UserFiles/Servers/Server_8252759/File/2024-25%20Prof%20Agreement%20(1).pdf) (“Any professional employee may be terminated or given notice of non-renewal without receiving a written warning for any of the following: . . . Failure to comply with written rules or other written requirements established by the Board or its authorized representatives.”).

<sup>103</sup> Letter from Kris W. Kobach, Att’y Gen., State of Kan., to Brian Jordan, Exec. Dir., Kan. Ass’n of Sch. Bds. 3–4 (Dec. 7, 2023), *available at* <https://www.ag.ks.gov/home/showpublisheddocument/10474/638460589512800000>. Note, for instance, that the KCKPS and TPS policies described above are identical.



These letters identified the school district policies discussed above and explained why the provisions of these policies requiring the concealment from parents of requests by their minor children to use different names and pronouns at school consistent with their “gender identity” raised grave concerns regarding the constitutional right of these parents to direct the upbringing and education of their children. The letters also raised important moral and policy concerns with such policies, asserting as follows:

[I]t is undeniable that “[a] child changing his or her gender identity [could have] major long-term medical and psychological ramifications.” It would be arrogant beyond belief to hide something with such weighty consequences from the very people (parents) that both law and nature vest with providing for a child’s long-term well-being. That a Kansas school district could so cavalierly allow *a minor child*—whom science tells us does not even have a fully formed brain until into his or her twenties—to decide whether his or her parents know about such things is shockingly irresponsible. [The school districts have] apparently surrendered to woke gender ideology to the point of jettisoning both propriety and common sense.<sup>104</sup>

The letters then asked the school districts a series of questions, including how they square their guidance with the requirements of constitutional law, who drafted the guidance and consulted on its drafting, and instances of an employee’s knowing concealment of a student’s use of a different name and pronouns at school in line with that student’s “gender identity.”<sup>105</sup>

In February 2024, the Office of the Kansas Attorney General issued a press release stating that, in response to the December 2023 letters, SMSD, OPS, KCKPS, and TPS had “dug in their heels and essentially asserted that school administrators know better than parents.”<sup>106</sup> According to the press release, the Kansas Association of School Boards “declined to either confirm or deny that it had been involved in drafting such policies.”<sup>107</sup>

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<sup>104</sup> Letter from Kris W. Kobach, Att’y Gen., State of Kan., to Anna Stubblefield, Superintendent, Kan. City Kan. Pub. Schs., USD 500, at 4 (Dec. 7, 2023), *available at* <https://www.ag.ks.gov/home/showpublisheddocument/10474/638460589512800000> (emphasis in original) (footnotes omitted).

<sup>105</sup> *See, e.g., id.* at 4–5.

<sup>106</sup> Press Release, Att’y Gen. of Kan., School Districts “Socially Transitioning” Students Without Parental Consent, Despite AG Warning (Feb. 8, 2024), <https://www.ag.ks.gov/Home/Components/News/News/40/1292?arch=1&npage=2>.

<sup>107</sup> *Id.*



## *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 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.”<sup>108</sup>

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.<sup>109</sup>

Notably, these decisions included a preliminary injunction issued by the U.S. District Court for the District of Kansas against enforcement of the 2024 Rule in four states and institutions across the country attended by members of plaintiff organizations Young America’s Foundation and Female Athletes United and the children of members of Moms for Liberty.<sup>110</sup> That decision was based in part on the fact that Title IX’s use of the term “‘sex’ means the traditional concept of biological sex in which there are only two sexes, male and female,”<sup>111</sup> and that the 2024 Rule “would, among other things, require schools to subordinate the fears, concerns, and privacy interests of biological women to the desires of transgender biological men to shower, dress, and share restroom facilities with their female peers.”<sup>112</sup>

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<sup>108</sup> *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”).

<sup>109</sup> *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*, 743 F. Supp. 3d 1314 (W.D. Okla. 2024); *Arkansas v. Dep’t of Educ.*, 742 F. Supp. 3d 919 (E.D. Mo. 2024); *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, 741 F. Supp. 3d 515 (N.D. Tex. 2024); *Texas v. United States*, 740 F. Supp. 3d 537 (N.D. Tex. 2024); *Kansas v. Dep’t of Educ.*, 739 F. Supp. 3d 902 (D. Kan. 2024); *Tennessee v. Cardona*, 737 F. Supp. 3d 510 (E.D. Ky. 2024); *Louisiana v. Dep’t of Educ.*, 737 F. Supp. 3d 377 (W.D. La. 2024).

<sup>110</sup> *Kansas*, 739 F. Supp. 3d at 935.

<sup>111</sup> *Id.* at 919.

<sup>112</sup> *Id.* at 923.



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.<sup>113</sup>

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”<sup>114</sup> 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.<sup>115</sup> 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.”<sup>116</sup>

### ***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”).<sup>117</sup> In that EO, the President declared that “[i]t is the policy of the United States to recognize two sexes, male and female,”<sup>118</sup> 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.”<sup>119</sup> 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 . . . .”<sup>120</sup> 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.”<sup>121</sup>

In Executive Order 14201 dated February 5, 2025, *Keeping Men Out of Women’s Sports* (“EO 14201”),<sup>122</sup> President Trump directed the Secretary of Education to comply with the judicial

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<sup>113</sup> *Dep’t of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024).

<sup>114</sup> *Tennessee v. Cardona*, No. 2:24-cv-00072-DCR-CJS, at 4–7 (E.D. Ky. Jan. 9, 2025).

<sup>115</sup> *Id.* at 7–8.

<sup>116</sup> *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, No. 4:24-cv-00461-O, at 5, 8 (N.D. Tex. Feb. 19, 2025).

<sup>117</sup> Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

<sup>118</sup> *Id.* at 8615.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 8616.

<sup>121</sup> *Id.* at 8617.

<sup>122</sup> Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 11, 2025).





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.”<sup>123</sup> 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.”<sup>124</sup>

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.”<sup>125</sup> 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 . . . .”<sup>126</sup>

### ***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 . . . .”<sup>127</sup>

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

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<sup>123</sup> *Id.* at 9279.

<sup>124</sup> *Id.* at 9280.

<sup>125</sup> 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).

<sup>126</sup> *Id.* at 2.

<sup>127</sup> 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>.



facilities in accordance with or corresponding most closely to their gender identity,”<sup>128</sup> 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*.”<sup>129</sup> 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 comply with Title IX.<sup>130</sup> 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.<sup>131</sup>

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.”<sup>132</sup> 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.”<sup>133</sup>

On April 11, 2025, the Department announced that it had referred its investigation of MDOE’s continuing noncompliance with Title IX to the U.S. Department of Justice “for further enforcement action” and that it would “initiate an administrative proceeding to adjudicate termination of MDOE’s federal K–12 education funding, including formula and discretionary grants.”<sup>134</sup>

### ***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

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<sup>128</sup> *Id.* at 7 (citing *LGBTQ+ School Resources*, ME. DEP’T OF EDUC., <https://www.maine.gov/doe/LGBTQ/staff> (last visited June 9, 2025)).

<sup>129</sup> *Id.* at 8 (emphases added).

<sup>130</sup> *Id.* at 9 (emphasis added).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 5 (quoting 34 C.F.R. § 106.6(b)).

<sup>133</sup> *Id.* at 6.

<sup>134</sup> Press Release, U.S. Dep’t of Educ., U.S. Department of Education Announces Consequences for Maine’s Title IX Noncompliance (Apr. 11, 2025), *available at* <https://www.ed.gov/about/news/press-release/us-department-of-education-announces-consequences-maines-title-ix-noncompliance>.



with the legislature to reverse” state laws on this and related issues.<sup>135</sup> 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.”<sup>136</sup>

### ***SPPO Dear Colleague Letter and Investigations of CDE and MDOE***

On March 27, 2025, the Department announced that SPPO had initiated an investigation of the California Department of Education (“CDE”) for its compliance with a new state law, which took effect on January 1, 2025, that “appears to conflict with FERPA by prohibiting schools from requiring personnel to disclose a child’s ‘gender identity’ to that child’s parent.”<sup>137</sup> In the announcement of the investigation, SPPO stated that it “has reason to believe that numerous local educational agencies (LEAs) in California may be violating FERPA to socially transition children at school while hiding minors’ ‘gender identity’ from parents,” as required by the California law.<sup>138</sup> SPPO recognized that “[s]tate laws do not override federal laws, and educational entities receiving federal funding are subject to FERPA and its implementing regulations.”<sup>139</sup>

The next day, March 28, SPPO launched an investigation to determine whether MDOE participated in the development of policies and practices in numerous school districts throughout Maine that violate FERPA by requiring staff to conceal records from parents with regard to their children’s decision to identify with a “gender” that does not match their biological sex at school.<sup>140</sup> The letter announcing the investigation quoted the following text from a memorandum published by the Maine Human Rights Commission:

In the event that the student and [his or her] parent/legal guardian do not agree with regard to the student’s sexual orientation, gender identity, or gender expression, the

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<sup>135</sup> See Charlie Kirk (@charliekirk11), X (ed. Mar. 27, 2025, 11:18 AM), <https://x.com/charliekirk11/status/1905278307664576715>.

<sup>136</sup> *Id.*

<sup>137</sup> Press Release, U.S. Dep’t of Educ., U.S. Department of Education Launches Investigation into California Department of Education for Alleged FERPA Violations (Mar. 27, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-launches-investigation-california-department-of-education-alleged-ferpa-violations>.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Letter from Frank E. Miller Jr., Acting Dir., Student Priv. Pol’y Off., U.S. Dep’t of Educ., to Pender Makin, Comm’r, Me. Dep’t of Educ. 1 (Mar. 28, 2025), available at <https://www.ed.gov/media/document/investigation-initiation-letter-maine-doe-ferpa-march-28-2025-109683.pdf>.



educational institution should, whenever possible, abide by the wishes of the student with regard [to his or her] gender identity and expression while at school.<sup>141</sup>

SPPO observed that “the overall memorandum on its face appears to give school officials discretion that would infringe on the rights of a parent under FERPA.”<sup>142</sup> SPPO also pointed out that Maine law appears to conflict with FERPA by preventing parents from inspecting records related to their children’s school counseling sessions.<sup>143</sup> “Assuming for purposes of this determination that this law prevents LEAs from allowing parents to have access to these records, the resulting system wide FERPA violation would also constitute a breach of the assurances in the consolidated application submitted by your agency to this Department to receive federal funds.”<sup>144</sup>

The letter noted various enforcement options at the disposal of the Department to ensure compliance with FERPA, including issuing a cease-and-desist order, withholding or recovering funds, and filing a lawsuit in federal court.<sup>145</sup>

OPPE also noted that concealing information from parents about their minor child’s request to transition to a different “gender identity” at school could lead to a Title IX violation: “When parents are denied access to records in a way that denies parents information about how their children are being treated based on their sex then the parent’s ability to report any Title IX violations to OCR is stifled.” For that reason, SPPO announced that it would refer the matter to OCR “as appropriate.”<sup>146</sup>

Also on March 28, OPPE issued a Dear Colleague Letter (“OPPE DCL”), as part of its legally required annual notification of federal funding recipients regarding their obligations under FERPA and the Protection of Pupil Rights Amendment (“PPRA”),<sup>147</sup> including a cover letter authored by

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<sup>141</sup> *Id.* at 3 (quoting Memorandum from Barbara Archer Hirsch, Comm’n Counsel, Me. Hum. Rts. Comm’n, to Amy Sneirson, Exec. Dir., Me. Hum. Rts. Comm’n 4 (Jan. 13, 2016), *available at* [https://www.maine.gov/mhrc/sites/maine.gov/mhrc/files/inline-files/20160113\\_g.pdf](https://www.maine.gov/mhrc/sites/maine.gov/mhrc/files/inline-files/20160113_g.pdf)).

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 3–4.

<sup>144</sup> *Id.* at 4.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 3.

<sup>147</sup> Letter from Frank E. Miller Jr., Acting Dir., Student Priv. Pol’y Off., U.S. Dep’t of Educ., to Chief State School Officers and Superintendents (Mar. 28, 2025) (hereinafter “SPPO Dear Colleague Letter”), *available at* [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/Secretary\\_Comb\\_SPPO\\_DCL\\_Annual%20Notice\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Secretary_Comb_SPPO_DCL_Annual%20Notice_0.pdf).



U.S. Secretary of Education Linda McMahon.<sup>148</sup> Secretary McMahon’s cover letter included the following strong reminder to state and local education authorities:

By natural right and moral authority, parents are the primary protectors of their children. Yet many states and school districts have enacted policies that presume children need protection from their parents. Often, such policies evade or misapply [FERPA], turning the concept of privacy on its head to facilitate ideological indoctrination in a school environment without parental interference or even involvement. Going forward, the Department of Education will insist that schools apply FERPA correctly to uphold, not thwart, parents’ rights.<sup>149</sup>

The SPPO DCL described some of the formal and informal policies and practices of school districts that thwart parental rights under FERPA:

For example, schools often create “Gender Plans” for students and assert that these plans are not “education records” under FERPA, and therefore inaccessible to the parent, provided the plan is kept in a separate file and not as part of the student’s “official student record.” While FERPA does not provide an affirmative obligation for school officials to inform parents about any information, even if that information is contained in a student’s education records, FERPA does require that a school provide a parent with an opportunity to inspect and review education records of their child, upon request. Additionally, under the current regulatory framework, FERPA does not distinguish between a student’s “official student record” or “cumulative file.” Rather, all information, with certain statutory exceptions, that is directly related to a student and maintained by an educational agency or institution, is part of the student’s “education records” to which parents have a right to inspect and review.<sup>150</sup>

Based on SPPO’s awareness of these policies that conflict with parental FERPA rights, it requested that every state education agency (“SEA”) submit to SPPO documentation “to provide assurance that the SEA and their respective LEAs are complying with the provisions of FERPA and PPRA . . . .”<sup>151</sup>

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<sup>148</sup> Letter from Linda E. McMahon, Sec’y of Educ., to Educators (Mar. 28, 2025), *available at* [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/Secretary\\_Comb\\_SPPO\\_DCL\\_Annual%20Notice\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Secretary_Comb_SPPO_DCL_Annual%20Notice_0.pdf).

<sup>149</sup> *Id.* at 1.

<sup>150</sup> SPPO Dear Colleague Letter, *supra* note 147, at 1–2.

<sup>151</sup> *Id.* at 3.



## Law

### *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.<sup>152</sup> 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.”<sup>153</sup> 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.”<sup>154</sup>

It is beyond serious debate that, as used throughout Title IX, the word “sex” refers to a person’s binary, biological sex—male or female—at birth.<sup>155</sup> 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.”<sup>156</sup> 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.”<sup>157</sup>

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<sup>152</sup> 20 U.S.C. § 1681(a).

<sup>153</sup> 20 U.S.C. § 1686.

<sup>154</sup> 34 C.F.R. § 106.33.

<sup>155</sup> See Amended Complaint at 10, *Louisiana v. Dep’t of Educ.*, 737 F. Supp. 3d 377 (W.D. La. May 3, 2024) (No. 3:24-CV-00563-TAD-KDM) (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.”)).

<sup>156</sup> *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

<sup>157</sup> *Louisiana*, 603 U.S. at 867.





## ***FERPA***

FERPA provides that “[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children.”<sup>158</sup> The term “education records” means “records, files, documents, and other materials” that “contain information directly related to a student” and “are maintained by an educational agency or institution or by a person acting for such agency or institution.”<sup>159</sup>

The statute also mandates that “[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in [the law]) of students without the written consent of their parents to any individual, agency, or organization,” with exceptions spelled out in the statute including “other school officials . . . who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required.”<sup>160</sup>

Outside of that exception (and others that are not relevant to this letter), and absent a judicial order or subpoena, FERPA prohibits a federally funded educational institution from releasing any personally identifiable information unless “there is written consent from the student’s parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student’s parents and the student if desired by the parents . . . .”<sup>161</sup> Moreover, such institutions must maintain a record of everyone who has requested or obtained access to the education records of each student—outside of school staff with “legitimate educational interests” in the information—and the interest the individual or entity had in obtaining the information.<sup>162</sup>

Parents retain FERPA-based rights to access their child’s educational records at school—and to sign off on any release of that information outside of the statutory exceptions—until their child is 18 years old or attends an institution of postsecondary institution, at which point these rights transfer to the student.<sup>163</sup>

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<sup>158</sup> 20 U.S.C. § 1232g(a)(1)(A).

<sup>159</sup> 20 U.S.C. § 1232g(a)(4)(A).

<sup>160</sup> 20 U.S.C. § 1232g(b)(1)(A).

<sup>161</sup> 20 U.S.C. § 1232g(b)(2).

<sup>162</sup> 20 U.S.C. § 1232g(b)(4)(A).

<sup>163</sup> 20 U.S.C. § 1232g(d).



## ***Kansas Law***

In April 2023, the Kansas Legislature overrode the state governor’s veto to enact SB 180, the “Women’s Bill of Rights.”<sup>164</sup> SB 180 provides that, “with respect to the application of an individual’s biological sex pursuant to any state law or rules and regulations,” the term “sex” means “biological sex, either male or female, at birth.”<sup>165</sup> It applies “[i]ntermediate constitutional scrutiny” to sex-based classifications and specifies that provision of separate, sex-based accommodations in contexts including bathrooms and locker rooms, “where biology, safety or privacy are implicated,” satisfies that standard of review.<sup>166</sup>

Kansas law also includes provisions similar to those of FERPA regarding access to education records. The state law provides as follows: “Upon request of a pupil or the parent of a pupil, the school records of the pupil shall be given to such pupil or parent . . . .”<sup>167</sup> The law defines “school records” broadly to mean “transcripts, grade cards, the results of tests, assessments or evaluations, and all other personally identifiable records, files and data directly related to a pupil.”<sup>168</sup> The law requires each school board to adopt a policy providing for the “[m]eans by which any student or parent of a pupil, as the case may be, may inspect and review any records or files directly related to the student or pupil”; and “restricting the accessibility and availability of any personally identifiable records or files of any student or pupil and preventing disclosure thereof unless made upon written consent of such student or parent of such pupil, as the case may be.”<sup>169</sup>

## **Analysis**

### ***SMSD, KCKPS, and TPS Facilities Access 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 private, sex-separated facilities they choose based on their asserted “gender identity.” Yet this is exactly what SMSD, KCKPS, and TPS are doing here.<sup>170</sup>

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<sup>164</sup> *SB 180*, KAN. LEGISLATURE, [https://kslegislature.gov/li\\_2024/b2023\\_24/measures/sb180/](https://kslegislature.gov/li_2024/b2023_24/measures/sb180/) (last visited June 9, 2025).

<sup>165</sup> KAN. STAT. ANN. § 77-207(a)(1).

<sup>166</sup> KAN. STAT. ANN. § 77-207(b).

<sup>167</sup> KAN. STAT. ANN. § 72-6310(c).

<sup>168</sup> KAN. STAT. ANN. § 72-6310(a).

<sup>169</sup> KAN. STAT. ANN. § 72-6311(b).

<sup>170</sup> We did not locate any OPS policies or guidance relating specifically to access to intimate facilities on the basis of “gender identity” rather than biological sex.



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.<sup>171</sup> 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 SMSD, KCKPS, or TPS might characterize the “gender identities” individuals might experience—whether “cisgender,” “gender-expansive,” “gender non-conforming,” “genderqueer,” “questioning,” “transgender,” or “genderfluid”—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 SMSD, KCKPS, and TPS, 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.

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.<sup>172</sup> Any policy to the contrary, such as those of SMSD, KCKPS, and TPS, discriminates against women and girls by depriving them of equal access to opportunities in education programs and activities and thus violates Title IX.

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<sup>171</sup> *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).

<sup>172</sup> See *supra* note 129 and accompanying text.



Beyond the fact that these policies facially violate Title IX, the dogmatic method of their implementation is equally concerning and harmful. Specifically, the policies implemented by KCKPS and TPS deny 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.<sup>173</sup> The subjective nature of “gender identity” and the penalties involved in refusing to comply with these districts’ orthodoxy of gender ideology<sup>174</sup> 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.

### ***SMSD, OPS, KCKPS, and TPS “Gender Identity” Policies Violate FERPA***

FERPA prohibits federally funded educational institutions such as public K–12 school districts from having any policy that denies or “effectively prevents” parents of minor students “the right to inspect and review the education records of their children.”<sup>175</sup> In the case of each school district discussed above, its policies, guidance, and related materials or evidence in unwritten communications show that the district is suggesting that its employees conceal from parents the records of their minor child’s request to change the name or pronouns by which he or she is referred in school. At the very least, each of these school districts is implementing a policy that “effectively prevents” parents from exercising their FERPA rights to access their minor children’s education records.

The OPS Guidance lists a number of factors (not based in FERPA or in any other federal law) for district employees to consider when determining whether to disclose a minor child’s “gender identity”-related requests to his or her parents.<sup>176</sup> If school employees are withholding education records from parents of minor children on the basis of these factors, then they are violating FERPA. While the current version of the SMSD Guidance does not on its face condone the concealment of “gender identity” records from parents of minor children, the Sullivan Complaint alleges that the school district announced such a policy of hiding from parents a student’s request to go by a different name or pronouns at a professional development session in April 2023.<sup>177</sup> The KCKPS Guidelines and TPS Regulation both recognize that employees might be “legally required” to disclose education records to parents of minor children who have asked to use different names and pronouns at school, but it encourages employees to withhold such records in other circumstances unless the child has authorized such disclosure. Considering disagreement on the reach of

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<sup>173</sup> See *supra* notes 52 and 90 and accompanying text.

<sup>174</sup> See *supra* notes 63, 64, 101, and 102 and accompanying text.

<sup>175</sup> *Supra* note 158 and accompanying text.

<sup>176</sup> See *supra* note 35 and accompanying text.

<sup>177</sup> See *supra* note 10 and accompanying text.



FERPA's records disclosure requirements,<sup>178</sup> it is worth knowing KCKPS and TPS's view on what they are "legally required" to disclose to parents.

In addition to any active concealment of education records that is occurring in these school districts pursuant to their written and unwritten policies and guidance, it is undeniable that these school districts "effectively prevent" parents from exercising their FERPA rights to access the records of their minor children because their policies and guidance require employees to withhold critical information from parents about the existence of such records. The OPS Guidance explicitly requires employees to cut parents out of the process of changing a student's name and pronouns in certain circumstances, and the Sullivan Complaint alleges that it is an unwritten policy of SMSD to do the same. The KCKPS Training, offered to the school board and in numerous professional development sessions in the school district, tells employees not to inform minor students' families about their desire to change "gender identities" at school,<sup>179</sup> and it envisions the creation of an "individual transition or support plan" for each student who makes such a request with or without parental involvement.<sup>180</sup> KCKPS and TPS explicitly require employees not to use the "preferred" name of a student in correspondence with his or her family and not to inform parents about their minor children's "gender identity"-related requests if the student declines to authorize or if the law does not specifically require disclosure.

These school districts have thus established a system of obfuscation where employees may work behind closed doors with minor students<sup>181</sup> to create education records that parents know nothing about, thus frustrating the parents' exercise of their FERPA rights. How can a parent effectively exercise his or her FERPA right to access education records he or she has no reason to believe exist due to a school district scheme to conceal such records from that parent? Such a system "effectively prevents" access to records to which parents are entitled under federal law.

FERPA also denies federal funding to educational entities such as public K–12 school districts with "a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization," with certain exceptions.<sup>182</sup> It appears that all four of the Kansas school districts discussed in this letter have

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<sup>178</sup> See *supra* note 150 and accompanying text (describing examples of misinterpretations of FERPA by educational institutions).

<sup>179</sup> See *supra* notes 73 and 74 and accompanying text.

<sup>180</sup> See *supra* notes 75 and 76 and accompanying text.

<sup>181</sup> There are other concerns beyond the production of records. The age of these students, the relative position of authority of school administrators and teachers, and the absence of student family members in these situations raise substantial concerns that such student "requests" are actually instances of coercion by school officials, which would constitute a violation of the student's rights to autonomy in addition to an infringement of parental rights.

<sup>182</sup> *Supra* note 160 and accompanying text.



provided for the sharing of records and information related to students’ “gender identity” with school staff absent the written consent of parents in violation of this provision of FERPA.

The KCKPS Guidelines and TPS Regulation both allow a student to change his or her educational records, aside from the school’s “official record,” to reflect a change in the student’s name or pronouns without parental consent.<sup>183</sup> Students’ rights under these policies to be referred to by their preferred name and pronouns and to access sex-separated restrooms that align with their “gender identity” also strongly imply that student personal information is shared throughout the school building to ensure they are not “deadnamed” or prevented from entering certain intimate facilities. No parental consent is required under these policies for the distribution of such information. Additionally, the KCKPS Training refers to a student’s “individual transition or support plan” developed in coordination with KCKPS staff, but not necessarily the student’s family, “related to access to restrooms, locker rooms, P.E. classes, and interscholastic competitive sports teams.”<sup>184</sup> Sharing such a plan or any information in this plan with school district staff and others without the consent of parents would be a violation of FERPA’s prohibition on disclosure of education records.

The OPS Guidance provides that school administrators should support a student’s request to go by a preferred name or pronouns at school, even in at least some cases when the family does not agree (or know about) the request.<sup>185</sup> The SMSD Guidance similarly contains no requirement that school administrators obtain the consent of a student’s parents before informing teachers and other school staff that the student wishes to go by a preferred name or preferred pronouns.<sup>186</sup> The guidance on its face also allows the student to change the name listed on his or her diploma as long as that student is “transgender.”<sup>187</sup> If carrying out any of these policies involves informing individuals of a minor student’s personal information contained in his or her educational records without obtaining the consent of the student’s parents, then such action entails violating FERPA unless it falls within one of the exceptions listed in the statute.

To justify their apparent dissemination of this personal information, the school districts may point to the exception in FERPA that allows them to share information with “other school officials [including teachers] who have been determined by such agency or institution to have legitimate educational interests” in the information without first obtaining parental consent.<sup>188</sup> But it is extremely difficult to see how any staff member’s interest in a student’s “gender identity” is “educational,” much less “legitimate.” Setting aside the fact that “gender identity” is a concept that does not appear in the relevant law and would have been wholly unfamiliar to the average

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<sup>183</sup> See *supra* notes 61 and 99 and accompanying text.

<sup>184</sup> See *supra* notes 75 and 76 and accompanying text.

<sup>185</sup> See *supra* note 33 and accompanying text.

<sup>186</sup> See *supra* note 24 and accompanying text.

<sup>187</sup> See *supra* note 25 and accompanying text.

<sup>188</sup> *Supra* note 160 and accompanying text.





individual at the time of FERPA’s adoption in 1974,<sup>189</sup> it is a concept that—as defined in the KCKPS and TPS policies and elsewhere—is wholly internal to each student and is thus much more akin to that student’s political affiliations, sexual behaviors and attitudes, and religious practices or beliefs<sup>190</sup> than the kinds of records, such as those related to academic performance and school discipline, that Congress likely contemplated in its “legitimate educational interest” exception. Thus, school staff members do not fall within this exception to FERPA’s prohibition on disclosure, and school administrators in these federally funded school districts must obtain parental consent to share the student’s information.

The FERPA-related problems inherent in the unlawful concealment of student records from parents and their unlawful disclosure to school staff without parental consent are compounded by the secret manner in which the school districts have adopted these policies. Outside the TPS Regulation, none of the school districts discussed in this letter has published its “gender identity” guidance in an accessible location (with its other school policies) on its district website. Any person who reads the policies SMSD, OPS, or KCKPS make publicly available on their websites would be surprised to know that these school districts have *any* policies related to intimate facilities access by students based on “gender identity” instead of sex or related to changing a student’s name or pronouns to align with that student’s “gender identity.” There does not appear to be any trace of “gender identity” guidance on SMSD’s or OPS’s websites; it appears that these districts have publicly released their guidance only in response to FOIA and media requests, while noting that they do not have any formal policy relating to these matters. And KCKPS maintains its “gender identity” guidance in a file on the BoardDocs® website that one would only locate if he or she knew to look for it via a search engine or fortuitously stumbled upon the documents introduced at a specific meeting the KCKPS Board held in September 2017.

This concealment is disturbing because it further frustrates parents’ exercise of their rights to access education records under FERPA and their constitutional right to direct the upbringing and education of their children. The likelihood exists that district officials are refusing to locate district procedures with publicly available policies on school district websites because they wish to hide

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<sup>189</sup> See, e.g., *Bostock v. Clayton Cty.*, 590 U.S. 644, 716 (Alito, J., dissenting) (“It was not until 1980 that the [American Psychological Association], in DSM-III, recognized two main psychiatric diagnoses related to [gender dysphoria], ‘Gender Identity Disorder of Childhood’ and ‘Transsexualism’ in adolescents and adults.”) (citing Am. Psych. Ass’n, Diagnostic and Statistical Manual of Mental Disorders 261–66 (3d ed. 1980)); *id.* at 715 (“The term ‘transgender’ is said to have been coined ‘in the early 1970s,’ and the term ‘gender identity,’ now understood to mean ‘[a]n internal sense of being male, female or something else,’ apparently first appeared in an academic article in 1964.”) (citations omitted); Rhonda R. Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*, 30 HASTINGS L. J. 799, 803 (1979) (“There is a popular, but incorrect, belief that transsexualism and homosexuality are the same thing.”).

<sup>190</sup> See 20 U.S.C. § 1232h.



them from the families of minor students, the Kansas Attorney General and other state government officials, and the Department. This illegal practice signals a desire on the part of the districts to evade accountability for their violations of FERPA and Title IX.<sup>191</sup>

### ***Kansas Law Is No Obstacle to Title IX or FERPA Compliance***

SMSD, OPS, KCKPS, and TPS cannot rely on any Kansas law to justify their failure to abide by the requirements of Title IX and FERPA. To the contrary, as described above, Kansas’s SB 180 explicitly applies intermediate constitutional scrutiny to sex-based classifications and specifies that providing sex-separated intimate facilities, with access determined by biological sex, satisfies this standard of review.<sup>192</sup> And Kansas’s educational records access law reinforces those of FERPA, requiring schools to comply with parental requests for school records and requiring written consent prior to the disclosure of such records.<sup>193</sup> Of course, Kansas law cannot override the federal requirements of Title IX or FERPA,<sup>194</sup> but in this case, no such conflict exists.<sup>195</sup>

### **Conclusion**

Title IX prohibits discrimination on the basis of sex—not “gender identity”—in federally funded education programs and activities. SMSD, KCKPS, and TPS 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 SMSD, KCKPS, and TPS effectively erase “sex” from Title IX. Accordingly, we urge OCR to investigate the allegations in this complaint

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<sup>191</sup> As SPPO noted in its letter to MDOE on potential FERPA violations, denial of access to educational records in violation of FERPA could “stifle” parents’ ability to report Title IX violations against their children to OCR. *Supra* note 146 and accompanying text. We encourage OCR to examine whether the school districts’ policies hiding from parents information regarding their children’s decisions to be referred to by a different name or pronouns at school could violate Title IX by concealing sex-based discriminatory conduct from parents.

<sup>192</sup> *See supra* note 166 and accompanying text.

<sup>193</sup> *See supra* notes 167 and 169 and accompanying text.

<sup>194</sup> *See* U.S. CONST. art. VI, cl. 2.

<sup>195</sup> Any law or local school board policy also cannot override the constitutional guarantee of the parental right to direct the upbringing and education of one’s minor children, which the districts are also denying with policies that require employees to withhold information from parents regarding whether their child has requested a change to his or her name and pronouns used at school. These policies foist upon unqualified school staff the crucial role parents should play in determining whether their minor child should begin a process of social gender transitioning that may have life-altering repercussions, including in many cases surgical and hormonal interventions. The attempts by these school districts to circumvent involvement of parents who might object to such transitioning is a frontal assault on the constitutional right of these parents to meaningfully engage in decisions relating to their children’s education and upbringing.



and ensure that these school districts comply with Title IX at the risk of loss of federal funds, as well as provide other appropriate relief.

FERPA prohibits federally funded school districts from denying or effectively preventing parents from accessing the educational records of their minor children, and it prevents district officials from disclosing such records to any individuals without parental consent—with exceptions not relevant in the present matter. SMSD, OPS, KCKPS, and TPS are in violation of FERPA because they are undermining parents' rights to access their children's educational records and appear to be distributing the information contained therein to employees with no legitimate educational interest in these records without parental consent. Therefore, we ask OPPE to consider the information we have presented in this letter and consider opening a directed investigation of the "gender identity" parental exclusion policies and practices of these school districts.

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

cc: The Honorable Kris W. Kobach  
Attorney General of Kansas