

June 5, 2025

**VIA ELECTRONIC MAIL**

Data Practices Compliance Official  
Minnesota Department of Education  
400 NE Stinson Blvd.  
Minneapolis, MN 55413  
[mde.datapractices@state.mn.us](mailto:mde.datapractices@state.mn.us)

**Re: Minnesota Data Practices Act Request: Records Regarding the Minnesota Department of Education's Policies and Practices Concerning Compliance with Title IX**

Dear Data Practices Compliance Official:

As a member of the public who is interested in compliance by state and local education authorities with Title IX's prohibition of sex-based discrimination in federally funded education programs and activities, I am making a request for data under the Data Practices Act, Minnesota Statutes, Chapter 13 ("Minnesota DPA"), to learn more about the current status of the Minnesota Department of Education's ("MDE") policies regarding access to sex-separated intimate facilities and overnight lodging in the state's education programs and activities.

**Background**

***MDE Guidance on Gender Identity***

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

It is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, *gender identity*, age, marital status, status with regard to public assistance, sexual orientation, or disability, or to fail to ensure physical and program access for disabled persons.<sup>1</sup>

In its September 2020 decision *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*,<sup>2</sup> the Minnesota Court of Appeals held that a (biologically) female student who identified as a male stated a valid claim

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<sup>1</sup> MINN. STAT. § 363A.13, subd. 1 (emphasis added).

<sup>2</sup> 950 N.W.2d 553 (Ct. of App. of Minn. 2020).

that the student's school had violated the MHRA<sup>3</sup> and the Minnesota Constitution<sup>4</sup> by denying the student's request to access the boys' locker room.<sup>5</sup>

Six years prior to *Anoka-Hennepin Sch. Dist. No. 11*, the Minnesota Legislature established a School Safety Technical Assistance Council ("Council") convened by MDE and other state agencies.<sup>6</sup> In 2017, the Council published a document entitled *A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students* (the "Toolkit").<sup>7</sup> The Toolkit, which remains available on MDE's website, includes the following definitions:

- It defines "gender identity" as "an individual's innate sense of one's own gender; a deeply held sense of psychological knowledge of one's own gender, regardless of the gender assigned at birth."<sup>8</sup>
- It defines "gender nonconforming" as "people whose gender expression [the external appearance, characteristics or behaviors typically associated with a specific gender] differs from stereotypical expectations, such as 'feminine' boys, 'masculine' girls, and those who are perceived as androgynous or gender nonbinary."<sup>9</sup>

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<sup>3</sup> *Id.* at 562 ("[T]he provision explicitly prohibits discriminating in any manner on the basis of sexual orientation, which includes segregating or separating transgender students.") (citations omitted). At the time of the decision, the MHRA did not refer to gender identity but did refer to discrimination based on sexual orientation, which the law defined to include "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness." *See id.* ("[T]he provision explicitly prohibits discriminating in any manner on the basis of sexual orientation, which includes segregating or separating transgender students.") (citing MINN. STAT. § 363A.13, subd. 1, .03, subds. 13, 44). In 2023, the Minnesota Legislature amended the MHRA to add gender identity to the list of protected characteristics and a definition specifically devoted to gender identity. 2023 Minn. Laws 2909 (art. 19, §§ 64, 48).

<sup>4</sup> MINN. CONST. art. I, § 2 ("No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. . . .").

<sup>5</sup> *Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d at 566, 572–73.

<sup>6</sup> MINN. STAT. § 127A.051, subds. 1, 3.

<sup>7</sup> MINN. DEP'T OF EDUC., A TOOLKIT FOR ENSURING SAFE AND SUPPORTIVE SCHOOLS FOR TRANSGENDER AND GENDER NONCONFORMING STUDENTS (rev. Sept. 25, 2017) (hereinafter "TOOLKIT"), available at

[https://education.mn.gov/mdeprod/idcplg?IdcService=GET\\_FILE&dDocName=MDE072543&RevisionSelectionMethod=latestReleased&Rendition=primary](https://education.mn.gov/mdeprod/idcplg?IdcService=GET_FILE&dDocName=MDE072543&RevisionSelectionMethod=latestReleased&Rendition=primary).

<sup>8</sup> *Id.* at 1.

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

- It defines “transgender” as “an umbrella term for people whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth.”<sup>10</sup>

The Council cited an unpersuasive case from another circuit<sup>11</sup> to provide support for the Toolkit’s proposition that “[s]chools should work with transgender and gender nonconforming students to ensure that they are able to access needed facilities in a manner . . . consistent with their gender identity . . . .”<sup>12</sup> The Toolkit argues that “[t]ransgender and gender nonconforming students should be afforded the opportunity to use the restroom of their choice.”<sup>13</sup> The Toolkit also extends the language to locker rooms, explaining that “[s]ome transgender and gender nonconforming students may prefer a private space while others may wish to use the locker room consistent with their gender identity”; it recommends that coaches consider how best to use various methods “to provide privacy for all students” in this context.<sup>14</sup> For overnight trips, the Toolkit provides that “school officials should allow a transgender or gender nonconforming student the opportunity to room with peers who match the student’s gender identity *unless the transgender or gender nonconforming student requests otherwise*.”<sup>15</sup>

According to the Toolkit, “[p]rivacy objections raised by a student in interacting with a transgender or gender nonconforming student may be addressed by *segregating the student raising the objection* provided that the action of the school officials does not result in stigmatizing the transgender and gender nonconforming student.”<sup>16</sup> Furthermore, with regard to restrooms, the Toolkit states that “[a]ny student who wishes not to share a restroom with a transgender or gender nonconforming student can be provided a private space such as a single-user restroom.”<sup>17</sup>

### ***U.S. Department of Education’s Enforcement of Title IX***

On April 29, 2024, the U.S. Department of Education (“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 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>18</sup> A slew of federal district courts and courts of appeals across the country blocked

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<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017).

<sup>12</sup> TOOLKIT, *supra* note 7, at 10.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (emphasis added).

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> *Id.*

<sup>18</sup> U.S. Dep’t of Educ., *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);

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.<sup>19</sup> Two courts ultimately vacated the rule.<sup>20</sup>

In light of these judicial vacatur of the 2024 Rule, the Department’s Office for Civil Rights (“OCR”) issued a Dear Colleague Letter announcing the Department’s intentions with regard to its enforcement of Title IX. 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>21</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>22</sup>

On March 19, 2025, OCR also 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>23</sup> Pointing to MDOE’s statewide guidance to schools requiring gender identity-based participation in school athletics programs and also indicating that “students must be permitted to use the bathroom and other sex-separated facilities in accordance with or corresponding most closely to their gender identity,”<sup>24</sup> OCR concluded 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

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*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>19</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>20</sup> See *Tennessee v. Cardona*, No. 2:24-cv-00072-DCR-CJS, at \*\*4–7 (E.D. Ky. Jan. 9, 2025); *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>21</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>22</sup> *Id.* at 2.

<sup>23</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), available at <https://www.ed.gov/media/document/letter-of-finding-maine-doe-109602.pdf?source=email>.

<sup>24</sup> *Id.* at 7 (citing *LGBTQ+ School Resources*, ME. DEP’T OF EDUC., <https://www.maine.gov/doe/LGBTQ/staff> (last visited Mar. 21, 2025)).

or access the space.”<sup>25</sup> Because the Maine Department of Education “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>26</sup>

On April 11, 2025, the Department announced that it had referred its investigation of Maine Department of Education’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 Maine Department of Education’s federal K–12 education funding, including formula and discretionary grants.”<sup>27</sup>

### ***MDE’s and Minnesota Attorney General’s Response***

On February 19, 2025, MDE Commissioner Willie Jett issued a letter to “Minnesota Educators and School Leaders” entitled “Reminder about Student Civil Rights.”<sup>28</sup> That letter requested that teachers and other recipients of the letter “consider” state law prohibiting discrimination on the basis of gender identity along with other characteristics.<sup>29</sup> It referred teachers and others to the state government’s Toolkit, as discussed above, which directs school employees to allow students to use intimate facilities on the basis of gender identity instead of sex.<sup>30</sup>

On February 20, 2025, Minnesota Attorney General Keith Ellison responded to a request from the Minnesota State High School League (“MSHSL”)—a nonprofit association to which school boards may delegate authority over extracurricular activities pursuant to state law<sup>31</sup>—for an advisory opinion on the impacts of President Trump’s executive order entitled *Keeping Men out of Women’s Sports* (“EO 14201”)<sup>32</sup> on school district and MSHSL policies requiring participation in extracurricular activities on the basis of gender identity rather than sex.<sup>33</sup> The attorney general’s advisory opinion concluded as follows:

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<sup>25</sup> *Id.* at 8 (emphases added).

<sup>26</sup> *Id.* at 9.

<sup>27</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>.

<sup>28</sup> Willie Jett, Comm’r, *Reminder About Student Civil Rights*, MINN. DEP’T OF EDUC. (2025), <https://content.govdelivery.com/accounts/MNMDE/bulletins/3d315be?reqfrom=share>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* See TOOLKIT, *supra* note 7, at 10.

<sup>31</sup> Letter from Keith Ellison, Minn. Att’y Gen., to Erich Martens, Exec. Dir., Minn. State High Sch. League, Feb. 20, 2025, at 1, *available at* <https://www.ag.state.mn.us/Office/Opinions/1035-20250220.pdf>.

<sup>32</sup> Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 11, 2025).

<sup>33</sup> *Id.* at 2.

The Executive Order does not have the force of law and therefore does not preempt any aspect of Minnesota law. Complying with the Executive Order and prohibiting students from participation in extracurricular activities consistent with their gender identity would violate the MHRA.<sup>34</sup>

The advisory opinion comes to this conclusion in part by reasoning that “Title IX does not authorize the President to issue directives with the force of law or to unilaterally rescind all federal funds from all educational programs that do not comply with presidential policy preferences.”<sup>35</sup> Thus, the letter finds that EO 14201 “does not have the force of law and cannot supersede Minnesota state law.”<sup>36</sup> The advisory opinion reasons that complying with the executive order—for instance, by “[e]xcluding transgender girl athletes from participating in girls’ extracurricular activities”—“denies those students the full utilization and benefit of educational institutions in violation of the MHRA.”<sup>37</sup> It cites as support for this conclusion the holding of *Anoka-Hennepin Sch. Dist. No. 11* that a “school must permit [a] transgender student to use [a] locker room that aligns with the student’s gender identity under the MHRA.”<sup>38</sup>

On February 25, 2025, Commissioner Jett issued a separate letter addressed to teachers and “[s]chool [l]eaders” relating to an OCR Dear Colleague Letter regarding discrimination on the basis of race, color, or national origin.<sup>39</sup> In that letter, Commissioner Jett included a link to the Minnesota Attorney General’s advisory opinion on EO 14201 discussed immediately above, thus endorsing the conclusions of the letter as a matter of MDE and state government policy on how school districts must carry out their responsibilities under the MHRA.<sup>40</sup>

Because MDE and others within the Minnesota state government have signaled that they do not intend to change their policies forcing Minnesota schools to offer access to sex-separated intimate spaces on campus and bedrooms for overnight school trips on the basis of gender identity instead of sex, thus placing the federal funding of these schools in jeopardy under Title IX, I am interested in obtaining electronic copies of records of MDE policies and communications relating to its guidance regarding separation of intimate facilities and overnight lodging on the basis of gender identity in light of the obligations of state and local education entities under Title IX and the recent developments described above.

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

<sup>35</sup> *Id.* at 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 4 (citing *Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d at 562–65).

<sup>38</sup> *Id.*

<sup>39</sup> See Press Release, Minn. Dep’t of Educ., Commissioner Jett Shares Update on U.S.

Department of Education Dear Colleague Letter (Feb. 25, 2025), *available at*

<https://content.govdelivery.com/accounts/MNMDE/bulletins/3d41d0f>.

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

## Requested Records

As an interested member of the public, I request that MDE produce the following records, in an electronic format, under the Minnesota DPA, Minnesota Statutes, Chapter 13:

1. The most recent version of the document entitled *A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students* that is maintained by MDE.
2. Any documents aside from the document described in Item 1 maintained by MDE from November 5, 2024, through the date of the search, including training materials and guidance documents for local education agency or school employees, relating specifically to the treatment of any student whose gender identity differs from sex assigned at birth or who do not identify with a specific gender, accessing intimate facilities on the basis of gender identity, or classifying students or employees on the basis of gender identity for the purpose of assigning bedrooms on school-sponsored overnight trips.
3. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation), both internal and external, to or from MDE regarding the treatment of any student whose gender identity differs from sex assigned at birth or who do not identify with a specific gender, accessing intimate facilities on the basis of gender identity, or classifying students or employees on the basis of gender identity for the purpose of assigning bedrooms on school-sponsored overnight trips from November 5, 2024, through the date of the search.
4. Electronic copies of all communications and correspondence (including but not limited to email, email attachments, texts, letters, memoranda, and other documentation), both internal and external, to or from MDE regarding the enforcement by any federal agency, including the U.S. Department of Education, of Title IX of the Education Amendments of 1972 from November 5, 2024, through the date of the search.
5. Electronic copies of all communications and correspondence (including but not limited to email, email attachments, texts, letters, memoranda, and other documentation), both internal and external, to or from CDE and Minneapolis Public Schools (“MPS”) dated on or after November 5, 2024, that reference Title IX and gender identity.
6. Electronic copies of all communications and correspondence (including but not limited to email, email attachments, texts, letters, memoranda, and other documentation), both internal and external, to or from CDE and Saint Paul Public

Schools (“SPPS”) dated on or after November 5, 2024, that reference Title IX and gender identity.

For the purposes of this request:

“Department” means the United States Department of Education.

“Intimate facilities” means any location designated for individuals to dress or undress with a reasonable expectation of privacy, including bathrooms, locker rooms, showers, changing rooms, and lactation spaces.

“MDE” means the Minnesota Department of Education and its employees, contractors, consultants, attorneys, agents, and representatives.

“Minneapolis Public Schools” means Minneapolis Public Schools; its employees, contractors, consultants, attorneys, agents, and representatives; and members of the Minneapolis Board of Education.

“Saint Paul Public Schools” means Saint Paul Public Schools; its employees, contractors, consultants, attorneys, agents, and representatives; and members of the Saint Paul Board of Education.

The Minnesota DPA offers members of the public the right to receive copies of records maintained by MDE. Government data means all information collected, created, received, maintained or disseminated by a government agency like MDE,<sup>41</sup> in any form, including paper documents, emails, electronic databases, CDs, photographs, or videos. The Minnesota DPA presumes that all government data is public absent an express federal or state legal bar to disclosure.<sup>42</sup>

I request the following regarding the provision of the requested records:

- MDE should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this preservation request and verifying full compliance with the preservation request. This matter may be subject to litigation, making the immediate initiation of a litigation hold on the requested materials necessary.
- MDE should search all record systems that may contain responsive records, promptly consulting with its information technology (“IT”) officials to ensure the completeness of the records search by using the full range of MDE’s IT capabilities to conduct the search. To constitute an adequate search for responsive records,

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<sup>41</sup> MINN. STAT. § 13.03, subd. 1.

<sup>42</sup> *Id.*



MDE should not rely solely on a search of a likely custodian's files by the custodian or representations by that likely custodian but should conduct the search with applicable IT search tools enabling a full search of relevant agency records, including archived records, without reliance on a likely custodian's possible deletion or modification of responsive records.

- MDE should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding MDE's business operations. Responsive records include official business conducted on unofficial systems which may be stored outside of official recording systems and are subject to the Minnesota DPA. MDE should directly inquire, as part of its search, if likely custodians have conducted any such official business on unofficial systems and should promptly and fully acquire and preserve those records as MDE official records. Such unofficial systems include, but are not limited to, governmental business conducted by employees using personal emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or X which was formerly known as Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack. Failure to identify and produce records responsive to this request from such unofficial systems would constitute a knowing concealment by MDE calculated to deflect its compliance with the Minnesota DPA requirements.
- MDE should provide entire records responsive to this request in a timely manner, broadly construing what information may constitute "data" or a "record" and avoiding unnecessarily omitting portions of potentially responsive records as they may provide important context for the requested records (*e.g.*, if a particular email is clearly responsive to this request, the response to the request should include all other emails forming the email chain, to include any attachments accompanying the emails).
- MDE should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If MDE determines that any portions of otherwise responsive records are statutorily exempt from disclosure, I request that MDE disclose reasonably segregable portions of the records.
- For any responsive records withheld in whole or part by MDE, it should provide a clear and precise enumeration of those records in index form presented with sufficient specificity and should identify the specific code section that authorizes the withholding of the records.<sup>43</sup>

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<sup>43</sup> MINN. STAT. § 13.03, subd. 3(f).

- Please provide responsive records in electronic format by email, native format by mail, or PDF or TIF format on a USB drive. If it helps speed production and eases MDE's administrative burden, I welcome provision of the records on a rolling basis.

## **Conclusion**

I appreciate MDE's prompt attention to this request for records pursuant to the Minnesota DPA, which will provide important information regarding MDE's compliance with Title IX.

If you have any questions or I can further clarify my request, please contact me at your earliest convenience at [pfzimmerman@gmail.com](mailto:pfzimmerman@gmail.com).

Sincerely,

Paul Zimmerman