

September 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

**Re: Title IX Complaint Against Fairfax County Public Schools**

To Whom It May Concern:

Pursuant to the discrimination complaint resolution procedures of the U.S. Department of Education's ("Department") Office for Civil Rights ("OCR"), the Defense of Freedom Institute for Policy Studies ("DFI") files this complaint against Fairfax County Public Schools ("FCPS") 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> DFI submits this complaint on behalf of [REDACTED] the [REDACTED] of a freshman student at West Springfield High School ("WSHS"), a public high school in the FCPS system.<sup>2</sup>

DFI is a national nonprofit organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker, and to protecting the civil and constitutional rights of Americans at school and in the workplace. Such rights include the right not to be excluded from equal opportunities in federally funded education programs or activities due to prohibited discrimination on the basis of sex, including sexual harassment in school programs and activities.

Accordingly, we request that OCR investigate the actions described below, consider potential sanctions against FCPS as authorized under Title IX,<sup>3</sup> and put FCPS on clear notice that failure to comply with federal law in immediately restoring sex-separated access by its students to its locker rooms and other intimate facilities will result in the withdrawal of federal funding.

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

<sup>2</sup> To protect the privacy of the minor student, we do not disclose her name in this complaint. DFI can provide more information with regard to the identity of the student upon request from OCR.

<sup>3</sup> See 20 U.S.C. § 1682 (authorizing federal departments and agencies empowered to extend federal financial assistance to education programs or activities to effect compliance with Title IX "by the termination of or refusal to grant or to continue [such] assistance" or "by any other means authorized by law").



## Facts

### *WSHS's Deliberately Indifferent Response to a Boy's Sexual Harassment of Girls in Their Designated, Sex-Separated Locker Room*

FCPS 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> WSHS, which enrolls approximately 2,250 students,<sup>5</sup> is one of the largest schools in FCPS.<sup>6</sup>

On September 2, 2025, [REDACTED] 14-year-old daughter entered the girls' locker room and changed into gym clothes in preparation for her physical-education ("P.E.") class. As she was leaving the locker room, her daughter encountered a male student (who has facial hair and was wearing pants that were so tight they clearly outlined his genitalia) standing inside the girls' locker room and watching the girls preparing for P.E. class.

Upset by the boy's presence in a locker room reserved for females, where she had just changed and other girls were in various stages of undress as they prepared for their required P.E. class, [REDACTED] daughter told a teacher that there was a boy in the girls' locker room. The teacher told her daughter there was nothing that teacher could do about the boy's intruding into the private facility reserved for females and watching girls as they changed.

Having received no help from the WSHS teacher, [REDACTED] daughter called her, and she, in turn, immediately called the WSHS administrators' office. A member of the office's staff told [REDACTED]

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<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 Mar. 27, 2025) ("All public school districts are covered by Title IX because they receive some federal financial assistance and operate education programs.").

<sup>5</sup> *School Summary*, West Springfield High School, [https://schoolprofiles.fcps.edu/schlprfl/f?p=108%3A50%3A%3A%3A%3AP0\\_CURRENT\\_SCHOOL\\_ID%3A150](https://schoolprofiles.fcps.edu/schlprfl/f?p=108%3A50%3A%3A%3A%3AP0_CURRENT_SCHOOL_ID%3A150) (last visited September 9, 2025).

<sup>6</sup> *Middle and High School (Grades 7 – 12)*, Fairfax County Public Schools, <https://www.fcps.edu/academics/curriculum/middle-and-high-school-grades-7-12> (last visited September 9, 2025).



█████ that an administrator would return the call and deal with the issue that afternoon. No one from the administrators' office returned her call that day.

On September 3, █████ called the WSHS administrators' office twice but received no response.

On the morning of September 4, █████ called the WSHS administrators' office again. Other parents had also called the school by this time because their own daughters were upset that a boy had entered a locker room reserved for girls and in which girls were changing their clothes. That day, an administrator reached out to █████ and explained that school staff members were looking into the right of the *boy* to enter a locker room reserved for girls. The administrator suggested that, if █████ daughter was uncomfortable undressing in the presence of a boy in the girls' locker room, she should use a different facility, such as a unisex bathroom.

In a subsequent call on September 4, an administrator told █████ that WSHS would provide a solution that would allow her daughter not to change in the presence of a boy in the girls' locker room before she attended P.E. class the following week. No WSHS employee offered such a solution beyond suggesting that █████ daughter leave the locker room designated for her sex in order to change outside the presence of a boy.

On the morning of September 10, the boy again entered the girls' locker room and watched the girls change for P.E. class. One female student took a photo of the boy standing in the locker room and looking at the girls around him. The administrators' office called █████ late in the afternoon and requested a meeting, which █████ agreed to attend.

On the morning of September 11, the boy again entered the girls' locker room and watched the girls.

That day, █████ met with two WSHS assistant principals, Shannon Matheny and Amy Tasaka, and other personnel. They explained that they were continuing to look into the *boy's* rights and responsibilities. █████ produced a copy of the photograph taken of the boy as he stood in the girls' locker room. WSHS's school resource officer observed the photograph and told both vice principals that the student in question is a male and that he was standing in the girls' locker room.

The assistant principals then explained that a member of WSHS's administrative staff spoke with the boy earlier that week and told him not to go into the girls' locker room until they investigated the issue. █████ pointed out to them that the boy was in the girls' locker room that morning. The assistant principals explained that they would not stop the boy from entering the girls' facilities and that there would be no consequence if he continued to use them. During this time, the administrators used male pronouns to describe the boy. Mmes. Matheny and Tasaka concluded the meeting by again explaining that the girls could use a single occupancy unisex bathroom, instead



of the locker room designated for girls, to change for P.E. class if they were uncomfortable with undressing in front of a boy. They also noted that [REDACTED] could file a complaint with FCPS alleging a violation of Title IX, but they told her that filing such a complaint would not result in any denial of the boy's ability to enter the WSHS intimate facilities designated for girls.

On September 22, WSHS staff cut short the amount of time the freshman girls, including [REDACTED] daughter, could spend changing in the girls' locker room before P.E. class for the purpose of allowing the boy to use the locker room after them without being in their presence. According to [REDACTED] daughter, the girls were forced to rush in an effort to clear the locker room before the boy, who is a sophomore at WSHS, could enter the locker room to change with the female students in the 10th grade. After this episode, WSHS administrators called [REDACTED] to inform her that the boy has a right to use the girls' locker room because he identifies as female.

As of the filing of this complaint, WSHS is requiring [REDACTED] daughter and her freshman classmates to rush to change for P.E. class in order to allow the boy to enter the girls' locker room and change clothes with his 10th-grade female classmates. Upon [REDACTED] information and belief, the boy identifies as female but, in addition to entering the girls' locker room and watching the girls change, has also used the boys' locker room and bathrooms at the school. Moreover, upon [REDACTED] information and belief, multiple other parents of 9th-grade female students at WSHS have complained to the school's administrators about the presence of the boy in the girls' locker room prior to their P.E. class.

## **Title IX and FCPS Policies**

### ***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>7</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>8</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>9</sup>

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<sup>7</sup> 20 U.S.C. § 1681(a).

<sup>8</sup> 20 U.S.C. § 1686.

<sup>9</sup> 34 C.F.R. § 106.33.



It is beyond serious debate that, as used throughout Title IX, the word “sex” refers to a person’s biological sex—male or female—at birth.<sup>10</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>11</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 Supreme Court confirmed this understanding of Title IX, 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>12</sup>

### ***The 2020 Title IX Rule***

In 2020, the Department promulgated amendments to its regulations implementing Title IX (the “2020 Title IX Rule”).<sup>13</sup> For the first time as a matter of regulation, the 2020 Title IX Rule recognized that federally funded educational institutions must address sexual harassment in their programs and activities, codified a definition of sexual harassment that generally tracks Supreme Court caselaw but encompasses single instances of sexual assault and similar conduct, and set out the basic standards for a grievance process that federally funded educational institutions must follow before subjecting any student or employee to discipline for alleged sexual harassment.<sup>14</sup>

The 2020 Rule defines as a category of “sexual harassment” to be addressed by local education agencies like FCPS “[u]nwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”<sup>15</sup> The 2020 Title IX Rule requires that recipients of

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<sup>10</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>11</sup> *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

<sup>12</sup> *Louisiana*, 603 U.S. at 867.

<sup>13</sup> U.S. Dep’t of Educ., *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30,026 (May 19, 2020) (codified at 34 C.F.R. pt. 106).

<sup>14</sup> *Id.* at 30,030 (summary of the major provisions of the 2020 Rule).

<sup>15</sup> *Id.* at 30,574 (codifying this definition at 34 C.F.R. § 106.30). The 2020 Rule applies to the conduct described in this complaint. Because the Code of Federal Regulations still reflects the Department’s 2024 amendments to its regulations implementing Title IX, this complaint cites the



federal funding with “actual knowledge” of such sexual harassment in their program or activity “respond promptly in a manner that is not deliberately indifferent.”<sup>16</sup> Such a response is only deliberately indifferent if it “is clearly unreasonable in light of the known circumstances.”<sup>17</sup> The term “education program or activity” includes “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs . . . .”<sup>18</sup>

A recipient that has actual knowledge of such harassment in its program or activity must require its Title IX Coordinator to “promptly contact the complainant to discuss the availability of supportive measures” and “consider the complainant’s wishes with respect to supportive measures . . . .”<sup>19</sup> It requires that recipients respond “equitably” to reports of sexual harassment in their programs or activities by offering such supportive measures to complainants and observing a basic grievance process before disciplining respondents.<sup>20</sup> The 2020 Title IX Rule defines “supportive measures” as “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge” that “are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party.”<sup>21</sup>

### ***FCPS Policies Regarding “Gender Identity” and Harassment***

FCPS’s school board policies require that its schools and employees not discriminate on the basis of, among other characteristics, “sex” and “gender identity.”<sup>22</sup>

FCPS Regulation 2603.2, *Gender-expansive and Transgender Students* (“Regulation 2603.2”), declares that “[s]chools shall accept a student or parent’s . . . assertion of a student’s gender-expansive or transgender status.”<sup>23</sup> Regulation 2603.2 declares unequivocally that “[g]ender-expansive and transgender students shall be provided with the option of using a locker room or

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amendments published in the *Federal Register* on May 19, 2020, and effective as of August 14, 2020. *Id.* at 30,026.

<sup>16</sup> *Id.* at 30,574 (codifying this requirement at 34 C.F.R. § 106.44(a)).

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

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

<sup>19</sup> *Id.* at 30,574–75.

<sup>20</sup> *Id.* at 30,574.

<sup>21</sup> *Id.* (codifying this definition at 34 C.F.R. § 106.30).

<sup>22</sup> *Board Policy 1450.6, Nondiscrimination*, Fairfax County Public Schools, 1 (effective July 14, 2022), *available at* [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/CGCRFF6DA1B1/\\$file/P1450.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/CGCRFF6DA1B1/$file/P1450.pdf).

<sup>23</sup> *Board Regulation 2603.2, Gender-expansive and Transgender Students*, Fairfax County Public Schools, 2 (effective Apr. 21, 2022), *available at* [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/CDPTV8792B2E/\\$file/R2603.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/CDPTV8792B2E/$file/R2603.pdf).





restroom consistent with the student’s gender identity.”<sup>24</sup> For students who may object to undressing in an intimate facility designated for their sex in front of someone of the opposite sex, the regulation states that such person “shall be provided with a reasonable, non-stigmatizing alternative such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, or a nearby health or single-use/unisex bathroom), or with a separate changing schedule . . . .”<sup>25</sup> However, “[i]n no case shall a gender-expansive or transgender student be required to use a locker room or restroom that conflicts with the student’s gender identity or be limited to using only a private area, single-occupancy accommodation, or other single-use facility . . . .”<sup>26</sup>

Remarkably—and demonstrating the meaninglessness of any “gender” distinctions the school district sets forth in its policies with regard to access to intimate facilities—the policy notes that “[g]ender-expansive and transgender students may also be provided with the option of using the facilities that correspond to the student’s sex assigned at birth.”<sup>27</sup> Thus, FCPS grants so-called “transgender” and “gender-expansive” students the special privilege of using any private facility they wish—regardless of their “gender identity”—while students who are not “transgender” have no such privilege. Put another way, the policy on its face contemplates that, for a student to be permitted to use any sex-separated facility in the school, that student must merely declare that he or she is “transgender” or “gender-expansive” and then enter the facility.

FCPS Regulation 2602.40P defines “Discriminatory Harassment” to include “misgendering,”<sup>28</sup> which in turn the regulation defines as “[t]he act of labelling others with a gender that does not match their gender identity.”<sup>29</sup> According to the regulation, persistent “discriminatory harassment” of a student—including by “misgendering” that student—can result in discipline up to and including out-of-school suspension.<sup>30</sup>

FCPS Regulation 2118.3, *Title IX: Sexual Harassment by Students*, defines “sexual harassment” in line with the 2020 Title IX Rule to include “[u]nwelcome conduct determined by a reasonable

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<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 4–5.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Regulation 2602.40P: Acts for Which Students May Be Disciplined, Disciplinary Procedures, and Interventions*, Fairfax County Public Schools, 9–10 (effective July 1, 2025), available at [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/DJEQ3B674F0C/\\$file/R2602P.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/DJEQ3B674F0C/$file/R2602P.pdf).

<sup>29</sup> *Id.* at 60.

<sup>30</sup> *Id.* at 9–10, 17.



person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to an FCPS education program or activity . . . .”<sup>31</sup>

The regulation requires that, “[i]n response to a report of Sexual Harassment, the principal, in consultation with the Title IX Coordinator or designee, will promptly contact the Complainant to discuss the availability of the supportive measures, consider the Complainant’s wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint and explain to the Complainant the process for filing a Formal Complaint.”<sup>32</sup> The regulation defines “Supportive Measures” as “non-disciplinary, non-punitive individualized services offered as appropriate to stop any alleged harassment, protect one or more students or other persons, and/or to maintain access to education and activities. Such measures will be afforded as reasonably available . . . before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.”<sup>33</sup> Even without a formal complaint of sexual harassment, the regulation states that “the principal should offer and implement supportive measures as necessary to ensure the Complainant’s continued access to the educational program.”<sup>34</sup>

### ***The Rise and Fall of the 2024 Title IX Rule***

On April 29, 2024, the Department finalized Title IX implementing regulations (“2024 Title IX 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 Title IX 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>35</sup>

A slew of federal district courts and courts of appeals across the country blocked the 2024 Title IX 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

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<sup>31</sup> *Regulation 2118.3: Title IX: Sexual Harassment by Students*, Fairfax County Public Schools, 3 (effective May 20, 2025), available at [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/DGUKBM5116D1/\\$file/R2118.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/DGUKBM5116D1/$file/R2118.pdf).

<sup>32</sup> *Id.* at 6.

<sup>33</sup> *Id.* at 3–4.

<sup>34</sup> *Id.* at 6.

<sup>35</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”).





males who identify as female to share bathrooms, locker rooms, and other sex-separated private facilities with women and girls.<sup>36</sup>

On August 16, 2024, a unanimous Supreme Court agreed that a preliminary injunction blocking the “gender identity” provisions of the 2024 Title IX Rule was an appropriate measure.<sup>37</sup>

On January 9, 2025, the U.S. District Court for the Eastern District of Kentucky vacated the 2024 Title IX 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>38</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>39</sup> On February 19, 2025, the U.S. District Court for the Northern District of Texas also vacated the 2024 Title IX 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>40</sup>

### ***Trump Administration’s Correct Interpretation 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>41</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>42</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>43</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

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<sup>36</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>37</sup> *Dep’t of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024).

<sup>38</sup> *Tennessee v. Cardona*, No. 2:24-cv-00072-DCR-CJS, at 4–7 (E.D. Ky. Jan. 9, 2025).

<sup>39</sup> *Id.* at 7–8.

<sup>40</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>41</sup> Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

<sup>42</sup> *Id.* at 8615.

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



“sex” and related terms the definitions set forth in the EO “when interpreting or applying statutes, regulations, or guidance . . . .”<sup>44</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>45</sup>

In Executive Order 14201 dated February 5, 2025, *Keeping Men Out of Women’s Sports* (“EO 14201”),<sup>46</sup> President Trump directed the Secretary of Education to comply with the judicial vacatur of the 2024 Rule “and take other appropriate action to ensure this regulation does not have effect,” “take all appropriate action to affirmatively protect all-female athletic opportunities and all-female locker rooms” in line with Title IX, and “prioritize Title IX enforcement actions against educational institutions (including athletic associations composed of or governed by such institutions) that deny female students an equal opportunity to participate in sports and athletic events by requiring them, in the women’s category, to compete with or against or to appear unclothed before males.”<sup>47</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>48</sup>

In light of the vacatur of the 2024 Title IX 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 Title IX 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>49</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>50</sup> Accordingly, the 2020 Title IX Rule governs this complaint.

### ***OCR’s Conclusion of Title IX Noncompliance by FCPS and Other Virginia School Districts***

On July 25, 2025, OCR concluded its investigation of five school districts in Northern Virginia, including FCPS, finding that each school district maintained policies that violate Title IX because they “allow students to access intimate, sex-segregated facilities based on the students’ subjective

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<sup>44</sup> *Id.* at 8616.

<sup>45</sup> *Id.* at 8617.

<sup>46</sup> Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 11, 2025).

<sup>47</sup> *Id.* at 9279.

<sup>48</sup> *Id.* at 9280.

<sup>49</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>50</sup> *Id.* at 2.



‘gender identity.’”<sup>51</sup> The investigations into these school districts were based in part on the fact that these school districts are “the subject of several lawsuits, informal complaints, and reports, which allege that students in the [districts] avoid using school restrooms whenever possible because of the schools’ policies, and that female students have witnessed male students inappropriately touching other students and watching female students change in a female locker room.”<sup>52</sup>

At the time, OCR proposed to the school districts resolution agreements that would require them to “[r]escind the policies and/or regulations that allow students to access intimate facilities based on their ‘gender identity’ rather than their sex;” “[i]ssue a memorandum to each . . . school explaining that any future policies related to access to intimate facilities must be consistent with Title IX by separating students strictly on the basis of sex, and that Title IX ensures women’s equal opportunity in any education program or activity including athletic programs;” and “[a]dopt biology-based definitions of the words ‘male’ and ‘female’ in all practices and policies relating to Title IX.”<sup>53</sup>

FCPS and the other Northern Virginia local education agencies declined to sign OCR’s proposed resolution agreements by OCR’s deadline of August 15.<sup>54</sup> In response, OCR placed these agencies on high-risk status “with the condition that all federal funding flowing to these districts is done by reimbursement only,” and OCR commenced administrative action “seeking suspension or termination of federal financial assistance” to the districts.<sup>55</sup> As U.S. Secretary of Education Linda McMahon explained, “We have given these Northern Virginia School Divisions every opportunity to rectify their policies which blatantly violate Title IX. Today’s accountability measures are necessary because they have stubbornly refused to provide a safe environment for young women in their schools.”<sup>56</sup>

Rather than follow the Department’s correct interpretation of the unambiguous meaning of “sex” as used in Title IX and its requirement that schools not require girls to undress in front of boys as

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<sup>51</sup> Press Release, U.S. Dep’t of Educ., U.S. Department of Education Finds Five Northern Virginia School Districts in Violation of Title IX (July 25, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-finds-five-northern-virginia-school-districts-violation-of-title-ix>.

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

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

<sup>54</sup> Press Release, U.S. Dep’t of Educ., U.S. Department of Education Places Five Northern Virginia School Districts on High-Risk Status and Reimbursement Payment Status for Violating Title IX (Aug. 19, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-places-five-northern-virginia-school-districts-high-risk-status-and-reimbursement-payment-status-violating-title-ix>.

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

<sup>56</sup> *Quoted in id.*



a condition of participating in their programs or activities, the Fairfax County School Board chose to sue the Department in federal court in an attempt to block its decision to place FCPS in high-risk status.<sup>57</sup> Following the quick dismissal of this lawsuit by a federal judge who found that he did not have jurisdiction to block the Department's decision, on September 9, the Fairfax County School Board appealed the dismissal to the U.S. Court of Appeals for the Fourth Circuit.<sup>58</sup> Ignoring the consistent rejection of the 2024 Title IX Rule's "gender identity"-based requirements, including a unanimous Supreme Court that upheld injunctions blocking these particular provisions of the rule, FCPS maintains that it is compelled by law to allow access to intimate facilities on the basis of "gender identity," stating in a September 16 press release that the Department is demanding that FCPS "either break [Title IX] and discriminate against our students or face the loss of up to \$167 million in federal funding."<sup>59</sup>

## Analysis

### ***FCPS's Policies Requiring Access to Locker Rooms on the Basis of "Gender Identity" Violate Title IX***

Since its adoption in 1972, Title IX prohibits discrimination 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 single sex facilities they choose based on their asserted "gender identity." Yet this is exactly what FCPS requires here, and it is exactly how WSHS is carrying out the school district's policies.

Requiring a student to undress in the same facilities as 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>60</sup> Only by redefining "boy" or "girl" to include

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<sup>57</sup> See, e.g., Luke Lukert, *Fairfax County Public Schools Appeals Dismissal of Suit Against Education Dept. Tied to Gender Policy*, WTOP NEWS (Sep. 10, 2025), <https://wtop.com/virginia/2025/09/fairfax-county-public-schools-appeals-dismissal-of-suit-against-education-dept-tied-to-gender-policy/>.

<sup>58</sup> Notice of Appeal at 1, *Fairfax Cty. Sch. Bd. v. McMahon*, No. 1:25-cv-01432 (RDA/LRV) (E.D. Va. Sep. 9, 2025), available at [https://www.fcps.edu/system/files/forms/2025-09/2025.09.09 ecf no. 30 - fcsb notice of appeal.pdf](https://www.fcps.edu/system/files/forms/2025-09/2025.09.09%20ecf%20no.%2030%20-%20fcsb%20notice%20of%20appeal.pdf).

<sup>59</sup> Press Release, Dr. Michelle C. Reid, Update and Message from Fairfax County Public Schools (Sep. 16, 2025), <https://www.fcps.edu/news/update-and-message-fairfax-county-public-schools>.

<sup>60</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



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, let alone over the course of a single day. No matter how many different ways FCPS might characterize the “gender identities” individuals might experience, Title IX protects individuals from discrimination on the basis of sex, which has two categories—male and female. No additional categories of “gender identity” recognized by any school district, such as “transgender” or “gender-expansive,” can trump that binary, biologically based paradigm of federal law.

Thus, Title IX requires those institutions that it binds, including FCPS, to recognize the dignity of boys and girls in maintaining their privacy. By implementing policies to the contrary, FCPS is 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 has confirmed as much in finding that FCPS policies requiring access to intimate facilities on the basis of “gender identity” instead of sex violate Title IX and by placing the local education agency on high-risk status as a result of its failure to implement the clear mandate of the law. With the case described in this complaint, the harmful impacts of FCPS’s gender-ideology agenda on girls and women in the district are on full display. A biological boy has chosen to use whichever bathrooms and locker rooms he wishes, regardless of the sex for which they are designated, at WSHS and has invaded the privacy and civil rights of [REDACTED] daughter and other freshman girls by entering the girls’ locker room and watching them as they change in preparation for P.E. class. Rather than stop him from doing so, WSHS personnel have validated his decision to use the girls’ locker room, suggested that the *girls* use a different facility, and even cut short their time to change in an utterly backward attempt to accommodate the boy rather than uphold the girls’ right to safety and privacy and to take sufficient time to change in a locker room designated for girls. This is a far cry from any faithful implementation of the law; rather, FCPS has bound its employees to transgress the mandates of Title IX and discriminate against girls by conditioning equal access to its programs on changing clothes in a locker room with someone of the opposite sex.

Beyond the fact that the school’s policies facially violate Title IX, the dogmatic method of their implementation is equally concerning and harmful. FCPS policies make clear that there is to be no

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“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).



questioning of anyone's assertion of "gender identity."<sup>61</sup> The boy who has entered the locker room in these incidents, for instance, has reportedly used boys' intimate facilities previously and has not engaged in anything resembling a consistent or longstanding assertion of his new "gender." In fact, FCPS policies do not contemplate *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.

Students are likewise chilled from questioning any individual's assertion of "gender identity" for the purpose of claiming the right to use a sex-separated intimate facility. Based on a plain reading of the FCPS student-discipline policy, in merely speaking out about the presence of a boy in the girls' locker room, [REDACTED] daughter and other students were engaged in discriminatory harassment in the form of "misgendering" and thus exposed themselves to discipline up to and including out-of-school suspension.<sup>62</sup> That a boy has ended up in a girls' locker room staring at the occupants as they undress, and that teachers feel restrained from stopping this shocking behavior, is a natural result of these absurd and illegal policies.

### ***WSHS's Deliberate Indifference to Sexual Harassment***

Unduly concerned with complying with its own policies focused on prohibiting discrimination on the basis of "gender identity," WSHS administrators lost sight of their legal duties under Title IX and failed to remedy the sexual harassment to which [REDACTED] daughter and her female classmates were subject due to a boy's entering the locker room designated for their sex and staring at them as they undressed. The conduct was certainly "unwelcome" because several girls, including [REDACTED] daughter, objected to it and immediately brought it to the attention of WSHS staff and their parents. There is no doubt that a reasonable person in the shoes of [REDACTED] daughter would consider a boy's presence in the locker room in revealing clothing and his leering at high-school-freshman girls in what they had previously considered to be a private space to be severe and objectively offensive, and as discussed *supra*, the boy repeatedly accessed the locker room and perpetrated this conduct, making his behavior "pervasive." [REDACTED] daughter and her classmates who objected to the presence of the boy in the girls' locker room and to his conduct could no longer avail themselves of a sex-separated private space to change with their peers, and forcing them to use a unisex or single-occupancy bathroom certainly did not put them on equal footing with boys who were still able to use their locker room with other males without privacy concerns. Thus, allowing this sexual harassment in the girls' locker room deprived [REDACTED] daughter and her female classmates of equal access to WSHS's program.

WSHS had "actual knowledge" of this sexual harassment because its staff, including administrators who had every ability and opportunity to take action with regard to the conduct,

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<sup>61</sup> See *supra* note 23 and accompanying text.

<sup>62</sup> See *supra* note 30 and accompanying text.





received numerous reports of the behavior from students and parents, including [REDACTED]. In spite of these disturbing reports, WSHS staff, no doubt feeling bound by the school district's unlawful policy requiring them to allow boys who identify as female in girls' private spaces, responded by reviewing the right of a biological male to access private spaces designated for girls and ultimately did nothing to remove him from the locker room as they were required to do in response to these reports of sexual harassment. This response in itself is "clearly unreasonable in light of the known circumstances"; indeed, it is the epitome of "deliberate indifference" to the staff's knowledge of numerous reports of sexual harassment occurring in the girl's locker room, where they had control over both the boy and his conduct and could easily have remedied the behavior by barring him from the space.

WSHS also failed to offer any appropriate supportive measures to [REDACTED] daughter or, upon her information or belief, to any victims of the boy's sexual harassment, as it is required to do under the 2020 Title IX Rule and FCPS policies.<sup>63</sup> WSHS's eventual response to the boy's sexual harassment of freshman girls in its girls' locker room, far from striving to "restore . . . equal access to the recipient's education program or activity,"<sup>64</sup> instead laid bare the totally misguided priorities of the school district in attempting to validate the boy's conduct. The school's solution to the conduct was to impose restrictions on the amount of time the freshman girls could spend in the locker room in order to accommodate *the boy's* interest in continuing to use it. This does not restore the girls to equal access; it exacerbates the unequal treatment to which they are subject. Assuming, as is reasonable to do, that boys are not subject to the same time restriction in their designated locker room, they may leisurely dress for P.E. class among members of their own sex. [REDACTED] daughter and her female classmates, on the other hand, must rush to prepare for the class in fear that a boy will enter their private space at any moment and stare at them; if they do not like this situation, they must seclude themselves from their female classmates and use a single-occupancy facility one at a time.

This is not equal access to the school's program, and these are not "supportive measures" required under the 2020 Title IX Rule. FCPS and its staff at WSHS have not appropriately addressed the sexual harassment committed by a boy who entered the girls' locker room and stared at the girls within; it has instead shown deliberate indifference to the reports of harassment and has failed to offer adequate supportive measures to those who were subject to that harassment.

## Conclusion

In a school system that forbids, on pain of potentially severe discipline, *any* questioning of an individual's sincerity in asserting a particular "gender identity," it is frankly unsurprising, though still reprehensible, that teachers and administrators feel powerless to stop a boy from entering a

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<sup>63</sup> See *supra* notes 20, 32, 33, and accompanying text.

<sup>64</sup> See *supra* note 21 and accompanying text.



girls' locker room in clothing that reveals the shape of his genitalia and staring at its occupants as they undress. What is more surprising, perhaps—and unquestionably courageous—is that a group of girls chose to speak out about their concerns regarding the boy's presence and actions in their locker room in the face of potential discipline and utter lack of support from their school's administrators. We ask that OCR recognize the bravery of these student whistleblowers and force FCPS to abide by Title IX in offering them and their classmates privacy and equal access to their locker room for the time they take to prepare for P.E. class, or lose federal funding.

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

Sincerely,

/s/ Donald A. Daugherty, Jr.

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