DFI Defense of Freedom Institute

November 18, 2025

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

Re: Supplemental Facts Relating to Case No. 11-25-1848 (Fairfax County Public Schools)

To Whom It May Concern:

On September 29, 2025, the District of Columbia Regional Office of the U.S. Department of Education's Office for Civil Rights ("OCR") notified me that OCR had received a complaint ("Complaint") filed on behalf of Megan Smarz against Fairfax County Public Schools, Virginia ("FCPS") alleging discrimination on the basis of sex in education programs or activities that receive federal financial assistance in violation of Title IX of the Education Amendments of 1972 ("Title IX").[1] Filed on September 24, 2025, the complaint urges OCR to investigate FCPS's violations of Title IX. The complaint explains that administrators at West Springfield High School ("WSHS") (a school in the FCPS system) knew that, on multiple occasions, a boy had entered the girls' locker room and stared at the girls (including Ms. Smarz's 14-year-old daughter). As explained more fully below, rather than address the misconduct, FCPS has shown deliberate indifference to these reports of harassment and has failed to offer adequate supportive measures to those who were subject to that harassment.

On October 13, 2025, WSHS Assistant Principal Shannon Matheny, after initiating an investigation under FCPS policy,[2] informed Ms. Smarz that "the outcome of [her] investigation is unfounded," meaning that "there was insufficient evidence to support the allegations and concerns raised."[3] Ms. Matheny reached this conclusion despite (i) photographic evidence clearly showing the boy standing amidst the girls who were dressing for physical education class in their locker room and (ii) verification by a school resource officer who viewed the photograph that the subject

[1] 20 U.S.C. §§ 1681 *et seq*.
[2] Regulation § 2601.39P, Student Rights and Responsibilities (July 01, 2025).
[3] Appendix A.

in the picture was indeed a boy in the girls' locker room. Rather than launch an investigation under Title IX and provide proper supportive measures to her daughter, Ms. Matheny simply ignored the clear evidence presented to her.

Ms. Smarz disagrees with the findings provided in Ms. Matheny's letter. There is clear photographic evidence that there was a boy in the girls' locker room, and witnesses have corroborated this fact. Ms. Smarz's daughter offered a first-hand account of the boy's presence and behavior, and many other parents of girls complained to WSHS administrators that their daughters were forced to change in front of the boy as he stood in the girls' locker room. The evidence could not be clearer, and it is certainly sufficient.

In addition, as a part of the investigation report, the school promised a staggered dressing time, separating the boy from Ms. Smarz's daughter and her classmates by restricting the amount of time they were offered to change clothes but allowing the boy to watch older girls as they changed. This measure is woefully insufficient and demonstrates a deliberately indifferent response as it burdens Ms. Smarz's daughter and her classmates; indeed, the school only required the boy to participate in this token protection for a single week. Beginning the week of October 13, 2025, the boy reverted to entering and watching the girls change in their locker room at the same time as Ms. Smarz's daughter and the other freshman girls. He has continued to enter and watch the girls change since that date.

FCPS's Failure Adequately to Investigate and Respond

As explained in the complaint, the Department's 2020 amendments to its regulations implementing Title IX (the "2020 Title IX Rule")[4] recognized that federally funded educational institutions must address sexual harassment in their programs and activities.[5] 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."[6] The 2020 Title IX Rule requires that recipients of federal funding with "actual knowledge" of such

[4] 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).
[5] *Id.* at 30,030 (summary of the major provisions of the 2020 Rule).
[6] *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 amendments published in the *Federal Register* on May 19, 2020, and effective as of August 14, 2020. *Id.* at 30,026.

sexual harassment in their program or activity "respond promptly in a manner that is not deliberately indifferent."[7] Such a response is only deliberately indifferent if it "is clearly unreasonable in light of the known circumstances."[8]

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 . . . ."[9] 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.[10] 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."[11]

Rather than open a proper investigation of the sexual harassment alleged by Ms. Smarz and her daughter, WSHS administrators and FCPS officials have turned a blind eye to their actual knowledge of the harassment and offer no measures that restore or preserve female students' equal access to its education programs and activities. In doing so, they have exhibited deliberate indifference to the allegations of harassment, as their failure to allow Ms. Smarz's daughter and her classmates to change clothes for PE class in a locker room designated for their sex outside the presence of a boy is "clearly unreasonable in light of the known circumstances."

In performing a summary "investigation" that ignored clear evidence that a boy has repeatedly entered a girls' locker room and stared at the female students while they change clothes for PE class, as well as closing the investigation with a summary statement (with no accompanying explanation) that the evidence does not support the allegations, and despite their actual knowledge, WSHS administrators have been deliberately indifferent to unwelcome conduct on the basis of sex that any reasonable person would consider to be severe, pervasive, and objectively offensive. Ms. Matheny and her WSHS and FCPS colleagues failed to follow the 2020 Title IX Rule's requirements that federal funding recipients address sexual harassment in their education programs or activities and provide supportive measures that restore equal access to those subject to such harassment. Worse, Ms. Matheny's finding ensures that Ms. Smarz's daughter and her classmates

[7] *Id.* at 30,574 (codifying this requirement at 34 C.F.R. § 106.44(a)).
[8] *Id.*
[9] *Id.* at 30,574–75.
[10] *Id.* at 30,574.
[11] *Id.* (codifying this definition at 34 C.F.R. § 106.30).

will continue to suffer harassment as a condition of their participation in federally funded education program and activities of WSHS and FCPS.

Not only has FCPS exposed Ms. Smarz's daughter and her female classmates to ongoing harassment, the school district has remained idle in the face of this harassment and ignores irrefutable evidence of its existence. A boy has been accessing the girls' locker room for months. He enters, already dressed in his uniform, stares at the girls, and approaches and tries to interact with them as they change.

WSHS staff pretended that they would provide a support by requiring staggered changing times that would protect Ms. Smarz's daughter from having to expose herself to a boy, but would not protect many other girls from the same fate. But the school failed to implement even this feeble measure, and within a week the boy regained access to the girls' locker room at the same time as Ms. Smarz's daughter.

Conclusion

A federally funded school district's policy or practice of "allow[ing] boys and men to . . . access intimate facilities designated for girls and women" violates Title IX.[12] Likewise, such a school district's failure adequately to review and respond to undisputed evidence of a boy's repeated use of the girls' locker room violates the protections of the 2020 Title IX Rule. FCPS must end its discriminatory policy, which resulted in the recipient's deliberately indifferent response to Ms. Smarz's complaint, as well as all other needed measures to restore the equal access of Ms. Smarz's daughter and her female classmates to the school district's education programs and activities, together with other remedies OCR deems appropriate and necessary.

Please feel free to contact me with any questions related to this matter.

Sincerely,

/s/ *Donald A. Daugherty, Jr.*
Donald A. Daugherty, Jr.
Senior Counsel, Litigation
Defense of Freedom Institute for Policy Studies

[12] 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. 9 (Mar. 19, 2025) (hereinafter "Mar. 19 Letter"), *available at* https://www.ed.gov/media/document/letter-of-finding-maine-doe-109602.pdf?source=email.

Appendix A

Fairfax County PUBLIC SCHOOLS
ENGAGE • INSPIRE • THRIVE

West Springfield High School
6100 Rolling Road
Springfield, Virginia 22152

Dear Mr. & Mrs. Smarz,

I am writing to inform you about the recent investigation concerning [redacted] and to share the outcome of our findings.

On September 2, 2025, WSHS administrators received your report that [redacted] saw a male student in the female locker room earlier that morning who was staring at students in the locker room. Later that morning, we interviewed [redacted] who shared that a male student entered the female locker room, did not change clothes, and just stood there talking to another girl. Based on these reports, our school conducted a thorough and careful investigation. This process included interviews with relevant individuals, a review of available evidence, and consultations with appropriate school personnel.

After my school-based investigation under the Student Rights and Responsibilities (Regulation 2601), the outcome of my investigation is unfounded. This means that there was insufficient evidence to support the allegations and concerns raised. We understand that any investigation involving a student can be distressing, and we appreciate your patience and cooperation throughout this process. Our primary goal is to ensure a safe and supportive environment for all students while upholding fairness and due process.

Please note that FCPS does not tolerate retaliation for reporting discrimination or for participating in any related proceedings. Appropriate action will be taken against any student who is found to have retaliated against another who has reported or participated in a related proceeding. Any concerns that you have regarding potential retaliation should be reported to a member of the WSHS Administration team.

West Springfield is also committed to ensuring that all students have access to locker rooms where they can safely and comfortably use the facilities and change for P.E. class, should they choose to dress out. Although the outcome of the investigation was unfounded, in order to address your concerns and improve morning locker room procedures, we have established a staggered dressout schedule for all 1st and 2nd block P.E. classes. All P.E. students were informed of this new procedure on September 18. Ninth graders, including your daughter, will dress out first. Tenth graders, which includes the student who was the subject of the allegations, will dress out second. In addition, all students at FCPS, including West Springfield High School, may choose not to dress out for P.E. class. In that instance, we are providing lockable bins in which students may store their backpacks, notebooks and other materials during P.E. As shared with the P.E. students, West Springfield staff will work with all students to make sure they have sufficient time to change in a location in which they are comfortable should they choose to dress out for P.E. If your daughter needs additional help identifying a location or time where she can comfortably use the locker room, please let me know.

Feel free to contact me directly if you have any questions or if there is any additional information you require. We remain committed to providing a positive and nurturing educational experience for [redacted]. I sincerely appreciate your understanding and support.

Sincerely,
Shannon Matheny
Assistant Principal
703-913-3920

West Springfield High School
cc: Region Assistant Superintendent
Student File