

February 11, 2026

Via Email to 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

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

Re: Policies of the Maryland State Department of Education, Montgomery County Public Schools, Prince George’s County Public Schools, and Frederick County Public Schools 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 the Maryland State Department of Education (“MSDE”) and three local education agencies in Maryland—Montgomery County Public Schools (“MCPS”), Prince George’s County Public Schools (“PGCPS”), and Frederick 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”).¹

¹ 20 U.S.C. §§ 1681 *et seq.*



This letter also serves to inform the Department’s Student Privacy Policy Office (“SPPO”) about policies of MSDE, MCPS, PGCPS, and FCPS that violate the Family Educational Rights and Privacy Act (“FERPA”)² by directing or encouraging Maryland school staff (i) to conceal information from parents regarding requests by their minor children to alter the names and pronouns used by staff to align with their children’s “gender identity” rather than biological sex and (ii) to disseminate such information without a legitimate educational purpose.

We ask OCR and SPPO to investigate the policies and actions described below, consider potential sanctions against MSDE, MCPS, PGCPS, and FCPS 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 termination of federal funding.

Maryland Law, State Agencies and Associations, Policies, and Guidance

Maryland Schools and State Education Agencies

Maryland public K–12 schools enrolled approximately 890,000 students at the start of the 2023–24 school year.³ As of the 2020–21 school year, Maryland public K–12 schools received just over \$1.2 billion in federal revenue.⁴ Additionally, beginning in March 2020, Congress allocated nearly \$3.3 billion to Maryland public K–12 schools for the purpose of providing COVID-19 pandemic relief for students.⁵ MSDE is a recipient of federal funding⁶ and is thus bound by Title IX’s

² 20 U.S.C. § 1232g.

³ See Table 203.20. *Enrollment in Public Elementary and Secondary Schools, by Region, State, and Jurisdiction: Selected Years, Fall 1990 Through Fall 2023*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/digest/d24/tables/dt24_203.20.asp (last visited Feb. 10, 2026).

⁴ See Table 235.20. *Revenues for Public Elementary and Secondary Schools, by Source of Funds and State or Jurisdiction: School Year 2020–21*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/digest/d23/tables/dt23_235.20.asp (last visited Feb. 10, 2026).

⁵ See *Maryland ESSER Transparency*, MD. STATE DEP’T OF EDUC., <https://marylandpublicschools.org/about/Pages/OFPOS/ESSER/index.aspx> (last visited Feb. 10, 2026).

⁶ See, e.g., MD. STATE DEP’T OF EDUC. OFFICE OF EQUITY ASSURANCE & COMPLIANCE, MSDE TITLE IX NOTICE OF NONDISCRIMINATION POLICY AND GRIEVANCE PROCEDURE 1 (2024) (hereinafter “MSDE GRIEVANCE PROCEDURES”), available at <https://marylandpublicschools.org/programs/documents/operations/oehc/msde-title-ix-notice-and-grievance-procedure-a.pdf>.



prohibition against discrimination on the basis of sex⁷ and FERPA’s obligations with regard to access to education records.⁸

Maryland law grants to the Maryland State Board of Education (“State Board”), which appoints the State Superintendent of Schools (“State Superintendent”)⁹ and oversees MSDE,¹⁰ the authority to “[d]etermine the elementary and secondary educational policies of this State” and “[c]ause to be carried out those provisions of [the law] that are within its jurisdiction.”¹¹ The State Board “may institute legal proceedings to enforce” the law, as well as its “bylaws, rules, and regulations”¹² The State Board controls and supervises public schools and advises county boards, superintendents, and their staffs through the State Superintendent,¹³ who leads MSDE.¹⁴

In 1991, the State Board, superintendents of local school districts, and the State Board of Control of the Maryland Public Secondary Schools Athletic Association (“MPSSAA”) enacted a “master agreement” allocating the responsibilities for overseeing and operating interscholastic high-school

⁷ 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).

⁸ 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.”); 20 U.S.C. § 1232g(a)(1)(A) (“No 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.”); 34 C.F.R. § 99.10(a)(2) (applying parents’ FERPA rights to inspect and review their child’s education records to “[a]ny State educational agency (SEA) and its components”).

⁹ *Maryland State Board of Education*, MD. STATE DEP’T OF EDUC., <https://marylandpublicschools.org/stateboard/Pages/default.aspx> (last visited Feb. 10, 2026).

¹⁰ MD. STATE BD. OF EDUC., GOVERNANCE AND OPERATIONS MANUAL 3 (2026), available at <https://marylandpublicschools.org/stateboard/Documents/MD-SBOE-Governance-Operations-Manual-A.pdf>.

¹¹ MD. CODE ANN., EDUC. § 2-205(b).

¹² *Id.* § 2-205(d).

¹³ *Id.* § 2-205(g)(2)–(3).

¹⁴ MD. STATE DEP’T OF EDUC., MSDE ORGANIZATIONAL CHART 1 (2026), available at <https://marylandpublicschools.org/programs/documents/msde-orgchart-a.pdf> (last visited Feb. 10, 2026).



athletics in Maryland.¹⁵ MPSSAA operates under MSDE’s Division of Instruction and carries out the State Board’s “rules and regulations governing athletic programs for all students in the Public Secondary Schools of Maryland.”¹⁶ According to MPSSAA’s constitution:

The purpose of [MPSSAA] shall be to promote, direct, and control all interscholastic activities of high school students; to establish, maintain, and enforce such regulations as may be necessary to assure that all such activities shall be part of and contribute toward the entire educational program of the state of Maryland; to cooperate closely with the state department of education in the development of that program to safeguard the physical, mental, and moral welfare of high school students and protect them from exploitation.¹⁷

MSDE’s interscholastic-athletics administrator serves as MPSSAA’s director, and MSDE administers the revenue account where MPSSAA deposits the revenues it generates through its operations.¹⁸

According to its most recent handbook, MPSSAA membership consists of 200 schools, with 66,482 male participants, 53,746 female participants, and 120,228 total participants in its athletic programs as of the 2024–25 school year.¹⁹

Any Maryland public high school that qualifies under MPSSAA rules may become a member of the association, and any “member school must abide by the rules and regulations of the [MPSSAA].”²⁰ The State Superintendent has established a set of regulations “to govern the athletic program for all high school students in Maryland public secondary schools which are members of [MPSSAA],”²¹ including the criteria for student eligibility to participate in interscholastic high-school athletics.²²

¹⁵ See MD. PUB. SECONDARY SCHS. ATHLETIC ASS’N, MPSSAA HANDBOOK 2025–26, at 4 (2025), available at https://www.mpssaa.org/assets/1/6/MPSSAA_Handbook_2526.pdf.

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 47, 48–49.

²⁰ *Id.* at 6–7.

²¹ MD. CODE REGS. 13A.06.03.01.

²² *Id.* 13A.06.03.02. Such regulatory criteria do not establish student eligibility to participate in sex-separated sports on the basis of “gender identity” as opposed to sex. *Id.*



Maryland Law Concerning Access to Student Records

Pursuant to its authority to adopt rules and regulations for public-school administration in the state,²³ the State Board has provided by regulation that, except as otherwise specified, “a parent, guardian, or eligible [18-years old or older²⁴] student shall be given the opportunity to inspect and review the student records,”²⁵ defined as records that are “[d]irectly related to a student” and “[m]aintained by an educational agency or institution or by a party acting for the agency or institution.”²⁶ These State Board regulations also prohibit any educational agency or institutions from disclosing the personally identifiable information from a student’s records unless the student’s parent or guardian has authorized the disclosure by written consent,²⁷ except for “directory information”²⁸ or where the disclosure is to “other school officials . . . who have been determined by the system or institution to have legitimate educational interests” in the information (as well as for other limited purposes not relevant here).²⁹

General Nondiscrimination Protections

Maryland’s education code, which applies to all public elementary and secondary schools and nonpublic schools that receive state funds, prohibits any of these entities from “[d]iscriminat[ing] against a current student, a prospective student, or the parent or guardian of a current or prospective student on the basis of,” among other characteristics, sex and “gender identity.”³⁰ It also prohibits such entities from “withhold[ing] privileges from” these individuals “because of” such characteristics.³¹

State Board regulations apply to Maryland’s public elementary and secondary schools and nonpublic schools that receive state funds the same prohibitions against discriminatory treatment.³² These regulations authorize the State Superintendent to enforce these prohibitions pursuant to Maryland law.³³ If the State Superintendent concludes, based on a complaint filed with

²³ *Id.* 13A.08.02.00 (citing MD. CODE ANN., EDUC. § 2-205(c)).

²⁴ *Id.* 13A.08.02.03(B)(5).

²⁵ *Id.* 13A.08.02.13(A).

²⁶ *Id.* 13A.08.02.03(C)(1).

²⁷ *Id.* 13A.08.02.18(A).

²⁸ *Id.* The regulations define “directory information” as “information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed,” such as a student’s name, contact information, photograph, and date of birth. *Id.* 13A.08.02.03(B)(2).

²⁹ *Id.* 13A.08.02.19(A)(1).

³⁰ MD. CODE ANN., EDUC. § 26-704(a)–(b)(1).

³¹ *Id.* § 26-704(b)(2).

³² MD. CODE REGS. 13A.01.07.03(B)(1)–(2).

³³ *Id.* 13A.01.07.06(A).



MSDE, that “a county board, program, or school has violated” the state’s prohibition against discrimination, then the State Superintendent “may require the Comptroller to withhold funding from [such entity] in an amount to be determined by the Superintendent” consistent with state law.³⁴

On its website, MSDE’s Office of Equity Assurance and Compliance declares that MSDE does not discriminate on the basis of, among other characteristics, sex or “gender identity or expression.”³⁵ Additionally, MSDE maintains on its website a Title IX nondiscrimination policy and notice of nondiscrimination providing that the state agency “does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment.”³⁶

MPSSAA Guidance on Participation in Sex-Separated Sports

In August 2016, MPSSAA adopted a document entitled *MPSSAA Guidance for Participation of Transgender Youth in Interscholastic Athletics* (“MPSSAA Guidance”).³⁷ The purpose of the guidance, according to MPSSAA, “is to designate a set of criteria in which student-athletes are able to compete on a level playing field in a safe, competitive and friendly environment, free of discrimination.”³⁸ It goes on to provide that “[e]ach school system should develop and apply criteria for students to participate on interscholastic athletic teams consistent with their gender identity,” a term it defines as “[a] person’s deeply-felt internal sense of gender” that “may be different from or the same as the person’s sex assigned at birth.”³⁹ The MPSSAA Guidance defines “Transgender Person” as “[a] person whose gender identity does not match the sex assigned to him or her at birth” and specifies that “[a] transgender male is someone who identifies as male but was assigned the sex of female at birth; a transgender female is someone who identifies as female but was assigned the sex of male at birth.”⁴⁰

³⁴ *Id.* 13A.01.07.06(D)(4)–(5).

³⁵ *Office of Equity Assurance and Compliance*, MD. STATE DEP’T OF EDUC., <https://marylandpublicschools.org/programs/Pages/Operations/Equity-Assurance/index.aspx> (last visited Feb. 10, 2026).

³⁶ MSDE GRIEVANCE PROCEDURES, *supra* note 6, at 1.

³⁷ MD. PUB. SECONDARY SCHS. ATHLETIC ASS’N, MPSSAA GUIDANCE FOR PARTICIPATION OF TRANSGENDER YOUTH IN INTERSCHOLASTIC ATHLETICS 3 (2016), available at [https://core-](https://core-docs.s3.us-east-)

[1.amazonaws.com/documents/asset/uploaded_file/3843/BCPS/3607246/MPSSAA_Guidance_for_Participation_of_Transgender_Youth_in_Interscholastic_Athletics_August_2016.pdf](https://core-docs.s3.us-east-1.amazonaws.com/documents/asset/uploaded_file/3843/BCPS/3607246/MPSSAA_Guidance_for_Participation_of_Transgender_Youth_in_Interscholastic_Athletics_August_2016.pdf).

³⁸ *Id.* at 1.

³⁹ *Id.*

⁴⁰ *Id.*



The MPSSAA Guidance explains that “[l]ocal school systems’ criteria for inclusion of students whose gender identity and expression do not match their gender assigned at birth should be consistent with principles including that “[t]he integrity of women’s sports should be preserved”; “[p]olicies governing the participation of students in athletics should comply with Maryland and federal laws protecting students from discrimination based on sex . . . and gender identity and expression”; and “[o]nce the student has been granted eligibility to participate in the sport consistent with his/her gender identity, the eligibility is granted for the duration of the student’s participation and does not need to be renewed every sports season or school year.”⁴¹

Despite its inclusion of the “integrity of women’s sports” among these principles, the MPSSAA Guidance sets out a blanket policy that participation by “transgender persons” in school athletics “should provide for the opportunity for all students to participate in interscholastic athletics in a manner that is consistent with their gender identity, irrespective of the gender listed on a student’s records.”⁴² The MPSSAA Guidance directs any student who “desires to participate in activities in a manner consistent with his/her gender identity” to inform school administrators of this desire and notify them that “the student has a consistent gender identity different than the gender listed on the student’s school registration records.”⁴³ The guidance provides for schools, “should questions arise about whether a student’s request to participate in a sports activity consistent with his/her gender identity is bona fide,” to use a committee of appeal on a “case-by-case basis” to evaluate such questions.⁴⁴

DFI can find no evidence that MPSSAA has rescinded its 2016 guidance with regard to participation in sex-separated athletics on the basis of “gender identity” or that it has adopted superseding guidance. At least one resource indicates that this 2016 guidance remains the policy of MPSSAA.⁴⁵ At some point between January 23 and March 23, 2025, however, MPSSAA quietly removed a link to this guidance from the “References” page on its website.⁴⁶

⁴¹ *Id.* at 1–2.

⁴² *Id.* at 2.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Despite NCAA Changes MCPS Still Promotes Transgender Sports*, CLEAN SLATE MOCO (Feb. 9, 2025), <https://www.cleanslatemoco.com/despite-ncaa-changes-mcps-still-promotes-transgender-sports/3432>.

⁴⁶ *References*, MD. PUB. SECONDARY SCHS. ATHLETIC ASS’N, <https://web.archive.org/web/20250123162236/https://www.mpssaa.org/information-center/references/> (MPSSAA webpage archived by Way Back Machine on January 23, 2025, including link entitled “Guidelines for Participation of Transgender Youth in Interscholastic Athletics”); *References*, MD. PUB. SECONDARY SCHS. ATHLETIC ASS’N, <https://web.archive.org/web/20250323143647/https://www.mpssaa.org/information-center/references/> (MPSSAA webpage archived by Way Back Machine on March 23, 2025, not



MSDE’s Title IX Sex Discrimination Policy and Grievance Procedure

MSDE’s Office of Equity Assurance and Compliance has published on its website its Notice of Nondiscrimination Policy and Grievance Procedure (“MSDE Grievance Procedures”)—last updated in fall 2024.⁴⁷ As explained *infra*, that policy reflects numerous provisions of the Department’s 2024 amendments to its Title IX regulations recently vacated by federal courts and that are inconsistent with the currently applicable Title IX implementing regulations. For example, the MSDE Grievance Procedures:

- explicitly allow the individual or individuals who determine whether a respondent is responsible for sexual harassment (the decisionmaker) to be the same person as the Title IX Coordinator or the investigator of the allegations (*i.e.*, the single-investigator model);⁴⁸
- limit the right of parties to a grievance procedure to speak freely about the sexual-harassment allegations by providing that MSDE “will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures” other than certain narrow purposes like gathering evidence;⁴⁹
- allow but do not require staff to dismiss a Title IX sexual harassment complaint where the conduct, even if proved, would not constitute sex discrimination under Title IX;⁵⁰
- do not enable parties to present expert witnesses to provide evidence in a Title IX sexual harassment investigation;⁵¹
- allow MSDE to provide a description of the relevant evidence in a Title IX sexual harassment investigation and only require access to the actual evidence upon the request of either party;⁵²

including link entitled “Guidelines for Participation of Transgender Youth in Interscholastic Athletics”).

⁴⁷ MSDE GRIEVANCE PROCEDURES, *supra* note 6.

⁴⁸ *Id.* at 3.

⁴⁹ *Id.*

⁵⁰ *Id.* at 5.

⁵¹ *Id.* at 6.

⁵² *Id.*



- do not set out a process through which the parties to a Title IX sexual harassment proceeding may pose questions to each other, whether through an advisor or the decisionmaker;⁵³
- do not require a “formal complaint” (*i.e.*, a document signed by the complainant or the Title IX Coordinator alleging sexual harassment) to serve as the basis for the initiation of Title IX grievance procedures;⁵⁴ and
- incorrectly specify that federal law defines “hostile environment” sexual harassment under Title IX to include “[u]nwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.”⁵⁵

MSDE Policies and Guidance Related to “Gender Identity”

October 2024 Guidance

In October 2024, MSDE’s Division of Student Support and Federal Programs published a document, which remains on its website, entitled *Safe and Supportive Schools for All Students: Creating Inclusive Spaces for LGBTQIA+ Youth* (“October 2024 Guidance”).⁵⁶ The stated purpose of that document is to provide “technical guidance and assistance as each Maryland local education agency (LEA) works to support the rights of all students, including lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual (LGBTQIA+) youth” and “is designed to serve as a suggestion for consideration for school systems and administrators who may want to develop internal policy, procedures, and/or guidelines.”⁵⁷

The October 2024 Guidance defines:

- “[g]ender expression” as “[t]he external ways a person communicates their gender, such as clothing, hair, mannerisms, activities, or social roles”;⁵⁸

⁵³ *Id.* at 7.

⁵⁴ *Id.* at 9.

⁵⁵ *Id.* at 10.

⁵⁶ MD. STATE DEP’T OF EDUC. DIV. OF STUDENT SUPPORT & FED. PROGRAMS, SAFE AND SUPPORTIVE SCHOOLS FOR ALL STUDENTS: CREATING INCLUSIVE SPACES FOR LGBTQIA+ YOUTH (2024) (hereinafter “OCT. 2024 GUIDANCE”), available at <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/SafeSpaces/LGTBQ-Guidelines-for-Gender-Identity.pdf>.

⁵⁷ *Id.* at 4.

⁵⁸ *Id.*



- “[g]ender identity” as “[a] person’s deep internal sense of being female, male, or another identity”;⁵⁹ and
- “[t]ransgender” as “describ[ing] individuals whose gender identity is incongruent with their sex assigned at birth.”⁶⁰

The October 2024 Guidance instructs schools to “[p]rovide access to the restroom [and locker room⁶¹] that corresponds to the student’s gender identity” and to “[p]ermit transgender and gender non-conforming students whose gender identity is not exclusively male or female to use facilities they believe are the most consistent with their safety and gender identity.”⁶² For “any student who requests increased privacy and safety” or “is uncomfortable using shared facilities”—such as students who may object to sharing the bathroom or locker room designated for their sex with a member of the opposite sex—the guidance directs schools to “designate a private restroom such as one in the health suites” for their use.⁶³

The October 2024 Guidance also covers overnight field trips, coercing schools to “[m]aximiz[e] the student’s social integration” by “[m]ak[ing] arrangements in consultation with the student” and providing that “[i]f the transgender student’s parents or guardians are involved and supportive they may also be consulted.”⁶⁴ The guidance instructs school staff to “[b]e sensitive to the need to maintain the student’s privacy and not disclose or require disclosure of the student’s transgender status to the other students or their parents without the consent of the transgender student and/or the student’s parent.”⁶⁵ It directs schools to “[a]llow students the opportunity to room with others according to their gender identity” and to “[m]ake efforts to accommodate any student who desires greater privacy,” with the caveat that “transgender or gender non-conforming students should not be isolated.”⁶⁶

The October 2024 Guidance also requires school administrators to conceal information about a student’s “social transitioning” process from the student’s parents. The guidance instructs schools to “[p]rivately ask students how they want to be addressed in class **and whether this will be different when in correspondence to the home or at conferences with the student’s parents or guardians.**”⁶⁷ With respect to a student’s “right to privacy” regarding his or her “transgender

⁵⁹ *Id.*

⁶⁰ *Id.* at 5.

⁶¹ *Id.* at 16.

⁶² *Id.* at 15.

⁶³ *Id.* at 15, 16.

⁶⁴ *Id.* at 17.

⁶⁵ *Id.*

⁶⁶ *Id.* at 17–18.

⁶⁷ *Id.* at 15 (emphasis added).



status or gender non-conforming presentation at school,” the guidance states that “school system administrators may want to review and consider” guidelines that include encouraging administrators to conceal such information from parents. For instance, the guidance claims that “while a balance between students’ rights to privacy and parents’ rights to information in the educational environment is vital, no provision of state or federal law requires schools to affirmatively disclose this sensitive information to parents.”⁶⁸ In fact, the guidance states, without citation, that “[f]ederal courts have concluded that schools should not disclose sensitive information such as sexual orientation to parents without a legitimate stated interest to do so.”⁶⁹

In furthering this supposed obligation to keep critical information from the parents of minor children, the October 2024 Guidance instructs schools to “[i]mplement training and practices that assist school staff and prevent accidental disclosure of information that may reveal a student’s transgender status to others, including parents and other school staff unless the student and/or the student’s parent has authorized school staff to make such disclosure or staff is legally required to do so.”⁷⁰ According to the guidance, “while information in official student records must be disclosed upon the request of parents, sensitive information related to gender identity generally need not be disclosed without the student’s consent.”⁷¹

The October 2024 Guidance directs schools to follow MPSSAA guidelines and State Board regulations related to participation in interscholastic athletics.⁷² With respect to participation in physical education (“PE”) or athletics programs, the guidance offers as “[s]uggested guidelines for consideration” that schools should “[a]llow athletic participation without medical or legal documentation regarding gender”; “[p]rotect the student’s privacy rights” by not disclosing without consent a student’s “transgender status, medical history, or sex assigned at birth”; and “[f]ollow [MPSSAA] Guidelines [and Maryland regulations, discussed in turn *supra*] for participation in Interscholastic Athletics.”⁷³ The guidance states, “Each school system should develop and apply criteria for students to participate on interscholastic athletic teams consistent with their bona fide gender identity.”⁷⁴

⁶⁸ *Id.* at 16.

⁶⁹ *Id.* As explained *infra* at notes 291–95, SPPO recently concluded exactly the opposite in finding that a California Department of Education policy directing schools to conceal information about students’ “gender transitions” at school from their parents violates FERPA.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 17.

⁷³ *Id.*

⁷⁴ *Id.*



Companion Document

In an undated “Companion Document” published on its website, MSDE emphasizes its commitment to coercing personnel in Maryland schools to conceal “social transitioning” processes from minor students’ families.⁷⁵ According to that document, “Prior to discussion with the parent or guardian regarding the disclosure of information, work closely with the student to assess the degree to which, if any, the parent or guardian will be involved in the discussion.”⁷⁶ Although some parents may be “supportive of the student’s gender identity, expression, or transition status and can be partners in the transition process,” the document warns that keeping parents informed about such weighty matters in some cases “carries risks for the student, such as being rejected by the family.”⁷⁷ The Companion Document provides that, “[i]n these situations, case-by-case decisions made in consultation with the student should reflect an understanding of all the factors that may affect the student’s safety and well-being. Schools are generally not required to disclose this information unless it is recorded in an official record and requested by a parent.”⁷⁸ It advises school staff to follow the policies of their local school system regarding disclosure of information to parents.⁷⁹ The document states that school staff should assess the “needs and concerns” of parents only “if they are involved in the process.”⁸⁰

December 2024 Guidelines

In the wake of the 2024 elections, in December 2024, MSDE’s Office of Student Support and Federal Programs published a document entitled *Non-Discrimination Guidelines for Transgender and Gender Non-Conforming Youth* (“December 2024 Guidelines”).⁸¹ Those guidelines provide that “[i]t is *essential* for schools to take proactive steps in fostering an inclusive environment for

⁷⁵ MD. STATE DEP’T OF EDUC., PROVIDING SAFE SPACES FOR TRANSGENDER AND GENDER NON-CONFORMING YOUTH: GUIDELINES FOR GENDER IDENTITY NON-DISCRIMINATION, COMPANION DOCUMENT #1 (hereinafter “COMPANION DOCUMENT”), *available at* <https://www.marylandpublicschools.org/about/Documents/DSFSS/SSSP/SafeSpaces/LGBTQ-Companion-Document.pdf> (last visited Feb. 10, 2026).

⁷⁶ *Id.* at 1.

⁷⁷ *Id.* at 1–2.

⁷⁸ *Id.* at 2.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ MD. STATE DEP’T OF EDUC. OFFICE OF STUDENT SUPPORT & FED. PROGRAMS, NON-DISCRIMINATION GUIDELINES FOR TRANSGENDER AND GENDER NON-CONFORMING YOUTH (2024) (hereinafter “DEC. 2024 GUIDELINES”), *available at* <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/SafeSpaces/Non-Discrimination-Guidelines-for-Student-Gender-Transitions-A.pdf>. Note that the entity responsible for this document appears as a “Division” of MSDE in some documents but as an “Office” in others. Regardless of its official name, the entity is under the control of MSDE.



gender diversity. Every student deserves the *right* to have [his or her] gender, gender identity, and gender expression acknowledged and respected by the school community.”⁸²

The December 2024 Guidelines define “[g]ender transition” as “the process through which transgender people begin to live as the gender with which they identify, rather than the one associated with their sex assigned at birth,” making clear that this term applies to practices ranging from “social” transitioning—including “changing names, pronouns, hairstyles, and clothing”—to medical interventions such as hormonal or surgical procedures.⁸³

With regard to concealing information about a minor student’s “gender transition” from parents, the December 2024 Guidelines impose the same directive as MSDE’s October 2024 Guidance requiring “case-by-case decisions made in consultation with the student [that] should reflect an understanding of all the factors that may affect the student’s safety and well-being,” including whether the student’s parents will reject the student’s “gender identity.”⁸⁴ The guidelines provide that each student’s “Gender Transition Plan,” which determines the process through which a student will undergo a “gender transition” at school, will include what information to conceal from parents: it “should address confidentiality, privacy, and disclosure protocols including parent/guardian involvement (if any), confidentiality, privacy and disclosure” and “names, pronouns and student records.”⁸⁵ The guidelines also provide that the Gender Transition Plan should address “use facilities” and “extracurricular activities.”⁸⁶

More broadly, the December 2024 Guidelines envision schools as “uniquely positioned to serve as a buffer to protect students and their families,” placing the student alone “in charge of [his or her] gender transition.”⁸⁷ The guidelines reflect a disturbing philosophy pursuant to which schools are better suited to raise children and respond to their psychological and emotional needs than parents, exemplified by the following statement:

Many families do not know what to do to support their child, nor do they understand the issues involved in raising a transgender child. School personnel understand that acceptance is a process, not an event, and consider their words carefully and respectfully.⁸⁸

The December 2024 Guidelines counsel schools and educators to ignore applicable federal law and adhere to a policy of secrecy:

⁸² *Id.* at 1 (emphases added).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 2.

⁸⁶ *Id.*

⁸⁷ *Id.* at 3.

⁸⁸ *Id.*



On occasion parents may be reluctant to allow schools to honor student requests to change their names, pronouns, or clothing to reflect their gender identity. While a balance between students' rights to privacy and parents' rights to information in the educational environment is vital, no provision of state or federal law requires schools to affirmatively disclose this sensitive information to parents. Federal courts have concluded that schools should not disclose sensitive student information such as sexual orientation or gender presentation to parents without a legitimate stated interest in doing so.⁸⁹

When parents do discover that their minor child is engaged in a “gender transitioning” process at a Maryland school, the December 2024 Guidelines press school staff to dismiss any objections the parents have to gender ideology, advising them to use the following talking point: “The student’s emotional health is important to us and we know that family acceptance is among the strongest indicators that your child will stay emotionally strong and healthy.”⁹⁰ The guidelines minimize such parental objections as mere naivete, providing that schools “should be prepared for genuinely innocent confusion or uncertainty that may come up from members of the school community and set clear boundaries about what is appropriate to say to the student or their family.”⁹¹

February 2025 Memorandum

On February 27, 2025, Maryland State Superintendent of Schools Carey M. Wright published a memorandum with the following subject line: “Guidance on Addressing LGBTQIA+ Policies in Response to Recent Federal Actions” (“February 2025 Memorandum”).⁹² In that memorandum, the State Superintendent wrote, “We want to make it very clear that,” in light of recently issued White House executive orders and federal agency guidance in the form of “Dear Colleague” letters (“DCLs”) (discussed *infra*), “it is our expectation that every local education agency (LEA) remains in compliance with federal and Maryland statutes and regulations, including those protecting students based on their sexual orientation and gender identity.”⁹³ The memorandum identifies a

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 4 (citing AM. C.L. UNION, SCHOOLS IN TRANSITION: A GUIDE FOR SUPPORTING TRANSGENDER STUDENTS IN K–12 SCHOOLS (2016), available at https://assets.aclu.org/live/uploads/publications/schools_in_transition_6.3.16.pdf).

⁹² Memorandum from Carey M. Wright, State Superintendent of Schs., Md. State Dep’t of Educ., to Local Education Agency Superintendents, Guidance on Addressing LGBTQIA+ Policies in Response to Recent Federal Actions (Feb. 27, 2025) (hereinafter “Feb. 2025 Memorandum”), available at <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/SafeSpaces/Guidance-on-Addressing-LGBTQIA-Policies-in-Response-to-Recent-Federal-Memo-A.pdf>.

⁹³ *Id.* at 1.



“legal obligation” on the part of every LEA “to develop and maintain safe and inclusive learning environments for ALL students.”⁹⁴

The February 2025 Memorandum then characterizes the legal impact of the DCLs on Maryland schools as, at most, negligible: “Although DCLs provide guidance on the US Department of Education’s current interpretation of federal laws, it is important to note that a DCL does not carry the weight of law and does not impose obligations on the public or establish new legal standards. Federal, State, and local actions are still governed by enacted law and regulations and judicial actions.”⁹⁵ The memorandum then cites “*Grimm v. Glouster [sic] County School Board*” for the proposition that “discrimination against transgender students violates the United States Constitution.”⁹⁶ The memorandum affirms that “Maryland law remains in effect at this time” and that “[d]iscrimination on the basis of a number of protected classes,” including “gender identity,” “is illegal.”⁹⁷

Later, the memorandum states that “all guidance from MSDE,” including the October 2024 document *Safe and Supportive Schools for All Students* and the December 2024 *Non-Discrimination Guidelines*, “remains in effect,” and encourages local school boards and staff to review the guidance.⁹⁸

Maryland Attorney General’s February Guidance

In February 2025, Maryland Attorney General Anthony G. Brown published a document entitled *Guidance to the LGBTQIA+ Community Concerning Protections Under Maryland Law* (“February 2025 AG Guidance”).⁹⁹ In that guidance, Attorney General Brown states that, despite the executive orders and other actions of President Trump and his administration, “Maryland law . . . continues to provide protections from discrimination for persons based on sexual orientation and gender identity [sic] and federal policy can only override state law in limited circumstances.”¹⁰⁰ The guidance asserts that, “[d]espite how the Trump Executive Orders are written, under the Constitution, the President only has the executive powers of the United States and not the various states. He is not authorized to make laws, control the conduct or legislative

⁹⁴ *Id.* (emphasis in original).

⁹⁵ *Id.*

⁹⁶ *Id.*; *id.* n.2.

⁹⁷ *Id.* at 2.

⁹⁸ *Id.*

⁹⁹ ATT’Y GEN. OF THE STATE OF MD., GUIDANCE TO THE LGBTQIA+ COMMUNITY CONCERNING PROTECTIONS UNDER MARYLAND LAW (2025) (hereinafter “February 2025 AG Guidance”), available at

https://oag.maryland.gov/FederalActionsResponse/Documents/pdfs/2025_LGBTQI+_Guidance_Memorandum.pdf.

¹⁰⁰ *Id.* at 1.



powers of the states, or spend money contrary to legislative authority.”¹⁰¹ The guidance states—irrelevantly, as discussed *infra*—that “[t]he President cannot unilaterally impose funding restrictions without some authority from Congress.”¹⁰² While it expresses ambivalence regarding how the U.S. Supreme Court will interpret President Trump’s authority with regard to such restrictions, the guidance concludes that according to the Court’s “long-standing interpretation of the Constitution, Maryland antidiscrimination laws should stand.”¹⁰³

The February 2025 AG Guidance then points to (and, like the MSDE guidance, misspells the case name of) the Fourth Circuit Court of Appeals’ 2020 decision in “*Grimm v. Glouster [sic] County School Board*” as requiring Maryland to prohibit discrimination against “transgender students.”¹⁰⁴ It cites approvingly MSDE’s October 2024 Guidance and characterizes it as “elaborat[ing] on Maryland regulations that mandate nondiscrimination in education, recommending that teachers, staff, and administrators use a student’s chosen name and pronouns in accordance with [his or her] gender identity.”¹⁰⁵

March 2025 Commission Statement

On March 10, 2025, the Maryland Commission on LGBTQIA+ Affairs, a body established by the Maryland General Assembly “to assess the challenges facing LGBTQIA+ communities and to develop recommendations and best practices that promote inclusion,” published a *Statement on the Federal Attacks on Transgender Marylanders* (“March 2025 Commission Statement”).¹⁰⁶ The document warns that the Trump administration’s interpretation of Title IX to refer to biological sex and not “gender identity” “could allow schools to deny trans students access to bathrooms, sports teams, and gender-affirming accommodations.”¹⁰⁷ The statement characterizes federal agencies’ guidance and enforcement actions as “[e]ncourag[ing] forced outing policies, which put trans youth at risk of family rejection, homelessness, and violence.”¹⁰⁸ The statement demands that “[t]ransgender students must remain protected in Maryland schools, regardless of federal shifts,” to ensure the following (in the words of the commission):

¹⁰¹ *Id.* at 2.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 4; *id.* at 4 n.12.

¹⁰⁵ *Id.* at 4.

¹⁰⁶ MD. COMM’N ON LGBTQIA+ AFFS., STATEMENT ON THE FEDERAL ATTACKS ON TRANSGENDER MARYLANDERS 1, 6 (2025) (hereinafter “March 2025 Commission Statement”), available at <https://goci.maryland.gov/wp-content/uploads/sites/2/2025/03/Statement-on-the-Federal-Attacks-on-Transgender-Marylanders-Adopted-on-3.10.2025.pdf>.

¹⁰⁷ *Id.* at 2.

¹⁰⁸ *Id.*



- School districts continue to receive clear guidance affirming the rights of transgender students, including protections from forced outing policies and discrimination.
- Anti-bullying and inclusion policies remain strong, particularly in response to increased harassment in the wake of national rhetoric.
- Extracurricular and athletic opportunities remain accessible, preventing harmful exclusions from school activities.¹⁰⁹

The March 2025 Commission Statement concludes with a paean to gender ideology: “To every transgender, nonbinary, Two Spirit, gender diverse, and intersex Marylander: You are seen. You are valued. You are not alone.”¹¹⁰

March 2025 Superintendent Memorandum

On March 20, 2025, State Superintendent Wright issued another memorandum (“March 2025 Superintendent Memorandum”) reiterating the requirements of the guidance discussed above with regard to “gender transitioning” of students at Maryland schools and concealing information from parents who do not support such processes.¹¹¹ The memorandum specifies that “supporting LGBTQIA+ students,” as required under MSDE policies, includes “[w]ork[ing] closely with the student to assess what, if any, information regarding their gender identity the student is comfortable disclosing to their parent” and making such decisions “on a case-by-case basis” in light of the fact that “notifying parents carries risks for the student, such as being rejected by family.”¹¹² As in previous guidance, the memorandum states, without citation, that “[s]chools are generally not required to disclose personal information about students unless it is recorded in an *official* record and requested by a parent.”¹¹³ It states—again without citation—that “[f]ederal courts have recognized that schools may implement student support plans without parent input when the student expresses concerns that a parent would not be supportive, or that disclosing their

¹⁰⁹ *Id.* at 5.

¹¹⁰ *Id.* at 6.

¹¹¹ Memorandum from Carey M. Wright, State Superintendent of Schs., Md. State Dep’t of Educ., to Local Education Agency Superintendents, Creating Safe Spaces for LGBTQIA+ Youth in Schools (Mar. 20, 2025) (hereinafter “March 2025 Superintendent Memorandum”), available at <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/SafeSpaces/Creating-Safe-Spaces-Memo-A.pdf>.

¹¹² *Id.* at 2–3.

¹¹³ *Id.* at 3 (emphasis added).



gender identity would put the student at risk.”¹¹⁴ It directs school personnel to “follow their local education agency’s policy on parent disclosure.”¹¹⁵

Like other MSDE guidance, the philosophy that the school’s role is not to serve children at the direction of or even in partnership with parents, but rather to protect children from willfully ignorant parents who might (perish the thought) believe that there is no such thing as “gender identity” in contrast to their minor child’s biological sex, pervades the March 2025 Superintendent Memorandum. One condescending example notes:

Parents come to the topic of gender identity with differing levels of understanding and acceptance. Some may want to support their student but do not know how, while others may be reluctant to allow schools to embrace a student’s requests to change their name, pronouns, or clothing to reflect their gender identity.¹¹⁶

Superintendent Wright’s solution to this supposed conundrum is not to treat the family as a unit and keep parents informed about children’s psychological or emotional development; rather, he claims that “[i]t is essential for school staff to strive for balance when navigating how information is shared”¹¹⁷

July 2025 Joint Guidance

On July 23, 2025, the Maryland Commission on Civil Rights (“MCCR”)—an independent Maryland agency governed by a governor-appointed, nine-member body that is charged with enforcing the state’s nondiscrimination laws¹¹⁸—and Maryland’s Office of the Attorney General published a document entitled *Know Your Rights: A Guide to Understanding and Protecting Your Rights* (“July 2025 Joint Guidance”),¹¹⁹ which these state entities describe in a press release as a resource “designed to give Marylanders critical information about how Maryland law protects their

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 2.

¹¹⁷ *Id.*

¹¹⁸ See Press Release, State of Md. Comm’n on C.R., Maryland Commission on Civil Rights & Office of the Attorney General Publish *Know Your Rights: A Guide to Understanding and Protecting Your Rights 2* (July 23, 2025) (hereinafter “MCCR & OAG Press Release”), <https://mccr.maryland.gov/Documents/2025-07-23%20-%20MCCR%20%26%20OAG%20Publish%20Know%20Your%20Rights%20Guide.pdf>.

¹¹⁹ MD. COMM’N ON C.R. & MD. OFFICE OF THE ATT’Y GEN. C.R. DIV., *KNOW YOUR RIGHTS: A GUIDE TO UNDERSTANDING AND PROTECTING YOUR RIGHTS* (2025) (hereinafter “JULY 2025 JOINT GUIDANCE”), available at <https://mccr.maryland.gov/Documents/FINAL%20Joint%20KYR%20Booklet%207.10.25.pdf>.



civil rights” in areas including the rights of “members of the LGBTQIA+ community.”¹²⁰ In that press release, MCCR Executive Director Cleveland L. Horton II characterized the resource as “more than just a guide; it is a call to action” and “a tool for empowerment.”¹²¹ Attorney General Brown stated that “[t]his guidance makes clear: no Executive Order can erase the state and federal laws that ensure equal access to housing, jobs, and education.”¹²²

The July 2025 Joint Guidance provides that “Maryland law protects all students of public schools or most state-funded private schools from discrimination on the basis of their sexual orientation and/or gender identity.”¹²³ The document states that discrimination against “LGBTQIA+” students includes “[r]efusing to use a student’s chosen name or pronouns” and “[n]ot allowing a student to participate in activities or access appropriate facilities on the basis of their gender identity.”¹²⁴

Local School District Policies¹²⁵

Montgomery County Public Schools

With 156,511 students enrolled in its schools as of September 30, 2025, Montgomery County Public Schools (“MCPS”) is the largest school district in Maryland.¹²⁶ It is a local education

¹²⁰ MCCR & OAG Press Release, *supra* note 118, at 1.

¹²¹ *Id.*

¹²² *Id.* at 2.

¹²³ JULY 2025 JOINT GUIDANCE, *supra* note 119, at 32.

¹²⁴ *Id.*

¹²⁵ On October 31, 2025, DFI submitted to OCR a Title IX complaint on behalf of the parents of a middle-school student against Carroll County Public Schools (“CCPS”) in Maryland based on “gender identity” policies of that school district requiring male students seeking to change clothes for PE class to choose between sharing a locker room designated for boys with a female student or use distant single-user facilities, causing them to be late for class. *See* Letter from Donald A. Daugherty, Jr., Senior Couns., Litig., Def. of Freedom Inst. for Pol’y Stud., to U.S. Dep’t of Educ. Office for C.R., Title IX Complaint Against Carroll County Public Schools (Oct. 31, 2025), available at https://dfipolicy.org/wp-content/uploads/2025/10/Title-IX-MD-Complaint-CCPS-10.31.2025_Redacted.pdf. Because that complaint explains how CCPS carries out MSDE’s policies and directions requiring access to intimate facilities on the basis of “gender identity” instead of sex in violation of Title IX, we do not include CCPS in the present complaint, but we do take this opportunity to request respectfully that OCR open an investigation of CCPS (along with MSDE and the local education agencies discussed in the present complaint) to force it to address its Title IX violations as soon as practicable for the sake of students to whom the school district is currently denying its protections based on an incorrect interpretation of federal civil rights law.

¹²⁶ *About Us*, MONTGOMERY CNTY. PUB. SCHS., <https://www.montgomeryschoolsmd.org/about/> (last visited Feb. 10, 2026).



agency receiving federal funding and is thus bound by Title IX’s prohibition against discrimination on the basis of sex¹²⁷ and FERPA’s obligations with regard to access to education records.¹²⁸

MCPS maintains on its website a “comprehensive guide” entitled *Gender Identity in Montgomery County Public Schools, 2025–26* (“MCPS Guide”),¹²⁹ which implements MSDE’s and MPSSAA’s policies described *supra*. The purpose of the MCPS Guide is “[t]o consolidate and clarify the various Board policies, MCPS regulations, and procedures that address this crucial topic, . . . providing clarity and setting clear expectations for our staff, students, families, and community.”¹³⁰

Pursuant to MSDE policy, the MCPS Guide provides that, “[p]rior to contacting a student’s parent/guardian” upon learning that the student wishes to undergo “gender transitioning” at school, “the principal or identified staff member should speak with the student to ascertain the level of support the student either receives or anticipates receiving from home.”¹³¹ The policy then conditions whether or not the staff member should conceal this information from the student’s parents on the level of support the parents are likely to show for the student’s transition process:

In some cases, transgender and gender nonconforming students may not openly express their gender identity at home because of safety concerns or lack of acceptance. Matters of gender identity can be complex and may involve familial conflict. If this is the case, and support is required, Department of Student Conduct and Appeals (DSCA) should be contacted. In such cases, staff will support the development of a student-led plan that *works toward* inclusion of the family, *if possible*, taking safety concerns into consideration *as well as student privacy*, and

¹²⁷ See *supra* note 7; *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 Feb. 10, 2026) (“All public school districts are covered by Title IX because they receive some federal financial assistance and operate education programs.”).

¹²⁸ See *supra* note 8; *To Which Educational Agencies or Institutions Does FERPA Apply?*, U.S. DEP’T OF EDUC. STUDENT PRIV. POL’Y OFFICE, <https://studentprivacy.ed.gov/faq/which-educational-agencies-or-institutions-does-ferpa-apply> (last visited Feb. 10, 2026) (specifying that the definition of an “educational agency or institution” includes public schools and school districts (also known as “local educational agencies,” or “LEAs”)).

¹²⁹ MONTGOMERY CNTY. PUB. SCHS., *GENDER IDENTITY IN MONTGOMERY COUNTY PUBLIC SCHOOLS, 2025–26* (hereinafter “MCPS GUIDE”), *available at* <https://www.montgomeryschoolsmd.org/siteassets/district/students/rights/gender-identity/genderidentityguidelinesforstudents.pdf> (last visited Feb. 10, 2026).

¹³⁰ *Id.* at 1.

¹³¹ *Id.* at 3.



recognizing that providing support for a student is critical, even when the family is nonsupportive.¹³²

The MCPS Guide misleadingly invokes federal law to justify not disclosing information about a child’s “gender transition” to parents, stating that “[i]nformation about a student’s transgender status, legal name, or sex assigned at birth may constitute confidential medical information,” the disclosure of which “to other students, *their parents/guardians*, or third parties may violate privacy laws, such as [FERPA].”¹³³ As discussed *infra*, FERPA imposes no barrier preventing school personnel from disclosing records to parents if their child is under 18 years old—on the contrary, it requires the provision of such records to parents and guardians upon request and forbids school personnel from “effectively preventing” parents from accessing such records.

The MCPS Guide goes further in preventing parents from accessing information their children have revealed to school staff about their psychological and emotional condition:

Transgender and gender nonconforming students have the right to discuss and demonstrate their gender identity and expression openly and decide when, with whom, and how much to share private information. The fact that students choose to disclose their status to staff members or other students does not authorize school staff members to disclose a student’s status to others, *including parents/guardians* and other school staff members, unless legally required to do so or unless students have authorized such disclosure.¹³⁴

Thus, “[u]nless the student or parent/guardian has specified otherwise, when contacting the parent/guardian of a transgender student, MCPS school staff members should use the student’s legal name and pronoun that correspond to the student’s sex assigned at birth.”¹³⁵

According to the MCPS Guide, “Where facilities are designated by gender, students *must* be provided access to gender-specific facilities (e.g., bathrooms, locker rooms, and changing rooms) in alignment with their gender identity consistently asserted at school.”¹³⁶ The policy provides that school staff “should” grant students of the sex for which a sex-separated facility is designated who are “uncomfortable using a shared facility because of safety, privacy, or any other reason” access to an alternative, “nonstigmatizing” arrangement or facility.¹³⁷ However, “[s]tudents who are entitled to use a facility consistent with their gender identity cannot be required to use an alternative

¹³² *Id.* (emphases added).

¹³³ *Id.* (emphasis added).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 4 (emphasis in original).

¹³⁷ *Id.*



arrangement,” which should only be offered “at the request of a student and in a manner that keeps the student’s transgender status confidential.”¹³⁸

The MCPS Guide not only summarily dismisses the concerns of students who do not wish to share their designated sex-separated facilities with individuals of the opposite sex; it directs school staff to teach them that such reasonable objections actually reflect bigotry and disrespect for their fellow classmates:

Some students may feel uncomfortable with a transgender student using the same sex-specific facility. This discomfort is not a reason to deny access to the transgender student. School administrators and counseling staff members should work with students to address their discomfort to foster understanding of gender identity and to create a school culture that respects and values all students.¹³⁹

With regard to athletics and PE classes, the MCPS Guide states that, “[w]henver the school provides gender-segregated physical education classes and intermural sports, students must be allowed to participate in a manner consistent with their gender identity.”¹⁴⁰ Relying on Maryland law and State Board regulations that prohibit discrimination on the basis of “gender identity,” the MCPS Guide provides that “transgender and gender nonconforming students in MCPS shall be permitted to participate on the interscholastic athletics team of—

- “the student’s sex assigned at birth, or
- the gender to which the student has transitioned, or
- the student’s gender identity consistently asserted at school.”¹⁴¹

The MCPS Guide further provides that “[s]tudents must be allowed to participate” in outdoor education and overnight field trips “consistent with their gender identity consistently asserted at school.”¹⁴²

¹³⁸ *Id.* at 4–5.

¹³⁹ *Id.* at 5.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* On January 28, 2026, a three-judge panel of the U.S. Court of Appeals for the Fourth Circuit affirmed a decision of the U.S. District Court for the District of Maryland dismissing First Amendment challenges by a substitute teacher to MCPS policies requiring her to use preferred names and pronouns of MCPS students that do not align with their sex and to not disclose any minor student’s “gender identity” to his or her parents. *Polk v. Montgomery Cnty. Pub. Schs.*, No. 25-1136, slip op. at 3–4 (4th Cir. Jan. 28, 2026), *available at*



Prince George’s County Public Schools

Prince George’s County Public Schools (“PGCPS”) is the second-largest school district in Maryland,¹⁴³ with 130,603 students enrolled in its schools for the 2025–26 school year.¹⁴⁴ It is a local education agency receiving federal funding and is thus bound by Title IX’s prohibition against discrimination on the basis of sex¹⁴⁵ and FERPA’s obligations with regard to access to education records.¹⁴⁶

On March 24, 2022, the PGCPS Board of Education adopted a policy entitled *Inclusive Environments for LGBTQIA+ People* (“PGCPS Policy”),¹⁴⁷ which implements MSDE’s and MPSSAA’s guidance described *supra*. That policy underscores the comprehensive nature of PGCPS’s efforts to elevate “gender identity” over sex:

The Board of Education acknowledges that creating LGBTQIA+ inclusivity in our school system is not complete with any one action but depends on a systematic shift and by increasing the understanding of sexual orientation and gender diversity, recognizing that this creation requires appropriate communication, professional development, and a commitment from the Board, school staff, students, and the overall community.¹⁴⁸

<https://www.ca4.uscourts.gov/opinions/251136.P.pdf>. Although the teacher challenged some of the same MCPS policies at issue in this letter, *id.* at 5 (listing policy provisions requiring teachers to conceal a student’s “gender identity” information from parents), it is important to note that the claims dismissed by the district court asserted that those policies violated the *teacher’s* First Amendment rights to freely exercise her religion and to freedom of speech, *id.* at 8, *not* any parent’s statutory right to access their child’s education records—the latter of which is the subject of this complaint. Whatever one’s views on the outcome of the appeal in that case, *see id.* at 46 (Wilkinson, J., dissenting) (describing MCPS’s name and pronoun policy as applied to the plaintiff teacher as “a gross assault upon the First Amendment”), it has no bearing on parents’ right to access records under FERPA.

¹⁴³ *Facts and Figures*, PRINCE GEORGE’S CNTY. PUB. SCHS., <https://www.pgcps.org/about-pgcps/facts-and-figures> (last visited Feb. 10, 2026).

¹⁴⁴ *PGCPS District Performance Dashboard*, PRINCE GEORGE’S CNTY. PUB. SCHS., <https://microstrategy.pgcps.org/pgcps-dashboard/school-district-performance> (last visited Feb. 10, 2026).

¹⁴⁵ *See supra* note 127.

¹⁴⁶ *See supra* note 128.

¹⁴⁷ PRINCE GEORGE’S CNTY. PUB. SCHS. BD. OF EDUC., BOARD POLICY 0103—INCLUSIVE ENVIRONMENTS FOR LGBTQIA+ PEOPLE (2022) (hereinafter “PGCPS POLICY”), *available at* <https://www.pgcps.org/offices/ograc/board-policies/board-policies-0000---basic-commitments/bp-0103---inclusive-environments-for-lgbtqia-people>.

¹⁴⁸ *Id.*



The PGCPs Policy “prohibits discrimination in all PGCPs activities on the basis of actual or perceived sexual orientation, gender identity and gender expression,” as well as other characteristics such as sex.¹⁴⁹ The policy requires unequivocally that “[s]tudents and staff shall have access to restrooms, locker rooms or changing facilities that correspond to their gender identity.”¹⁵⁰ Like the MCPS Guide, the PGCPs Policy provides for access by any student who is uncomfortable sharing such an intimate facility with a member of the opposite sex (or does not wish to use such a facility for any other reason) to alternative arrangements or facilities.¹⁵¹ The PGCPs Policy then states as follows:

A transgender or gender diverse student and staff shall not be required to use a separate, non-integrated space when the student has not requested access to such a [sic] Under no circumstances shall students and staff be required to use sex-segregated facilities that are inconsistent with their gender identity.¹⁵²

While this provision of the policy contains a typographical error, it appears to impose on school staff the same proscription as the MCPS Guide: never force a student to use a sex-separated intimate facility that is designated for that student’s biological sex but does not correspond to the student’s “gender identity.”

The PGCPs Policy also provides that “[a]ll students shall be permitted to participate in physical education classes and intramural sports consistent with their gender identity in accordance with Administrative Procedure 5183,” described *infra*. For eligibility of students to participate in sex-separated interscholastic athletics, the PGCPs Policy points students to guidelines issued by the MPSSAA¹⁵³—which, as discussed *supra*, require participation based on “gender identity” instead of sex.

The PGCPs Policy also explicitly constrains the speech of school staff and students, recognizing that while “[i]nadvertent slips in the use of names or pronouns may occur,” students and school personnel “who intentionally and persistently refuse to respect a student’s or staff member’s gender identity by using the wrong name and/or gender pronoun are in violation of this Policy and may face disciplinary action.”¹⁵⁴

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*



The PGCPs Policy mirrors MSDE and other statewide guidance requiring staff members to conceal information about a minor student’s “gender transition” process, particularly when parents or guardians are not supportive of the transition:

School staff shall not disclose information that may reveal a student or staff member’s LGBTQIA+ status to others, *including parents* and other school staff, unless legally required to do so or the student or staff member has authorized such disclosure. School staff should recognize that providing support for a student, even when the family is non-supportive, is critical.¹⁵⁵

For the purpose of implementing the PGCPs Policy, the school district has adopted an administrative procedure, effective July 1, 2023, labeled *Transgender and Gender Diverse* (“PGCPs Procedure”).¹⁵⁶ That regulation reflects the secrecy requirements of MSDE and PGCPs policies, providing that “[s]chool staff shall not disclose information that may reveal a student’s or staff member’s transgender or gender diverse status to others, including to parents, students, and other school staff, unless legally required to do so or the student or staff member has authorized such disclosure.”¹⁵⁷ With the aim of concealing the “gender transition” process a student may be pursuing with the school, the PGCPs Procedure provides that, “[u]nless the student or parent/guardian has specified otherwise, when contacting the parent/guardian of a transgender or gender diverse student, PGCPs school staff members shall use the student’s legal name and pronoun that correspond to the student’s legal gender marker.”¹⁵⁸

In terms nearly identical to the policy of MCPS,¹⁵⁹ the PGCPs Procedure instructs as follows:

Prior to contacting a student’s parent/guardian, the principal or identified staff member should speak with the student to ascertain the level of support the student either receives or anticipates receiving from home. In some cases, transgender and gender diverse students might not openly express their gender identity at home because of safety concerns or lack of acceptance. Matters of gender identity can be complex and might involve familial conflict. If this is the case, staff will support the development of a student-led plan that *works toward* inclusion of the family, *if possible*, taking safety concerns into consideration, *as well as student privacy*, and

¹⁵⁵ *Id.* (emphasis added).

¹⁵⁶ PRINCE GEORGE’S CNTY. PUB. SCHS., ADMINISTRATIVE PROCEDURE 0103—TRANSGENDER AND GENDER DIVERSE (2023) (hereinafter “PGCPs PROCEDURE”), available at <https://www.pgcps.org/offices/ograc/administrative-procedures/0000---system-guidance/ap-0103---transgender-and-gender-diverse>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Supra* notes 131, 132, and accompanying text.



recognizing that providing support for a student is critical, especially when the family is non-supportive.¹⁶⁰

The PGCPS Procedure only contemplates including a minor student’s parents in consultations regarding a “gender support” plan when the parents agree with the student’s decision to engage in “transitioning”: “If requested, the principal/designee, in collaboration with the student and the student’s family (if the family is supportive of the student), shall develop a plan to ensure that the student has equal access and equal opportunity to participate in all programs and activities at school and is otherwise protected from gender-based discrimination at school.”¹⁶¹ Like MCPS, PGCPS pretends that FERPA imposes a barrier to sharing a minor student’s school records with parents, asserting that information regarding “a student’s transgender or gender diverse status, legal name, or sex assigned at birth may constitute confidential medical information,” the disclosure of which to “their parents/guardians . . . may violate privacy laws” like FERPA.¹⁶²

The PGCPS Procedure reiterates that “[t]he fact that students choose to disclose their status to staff members or other students does not authorize staff members to disclose a student’s status to others, *including parents/guardians* and other staff members, unless legally required to do so or unless students have authorized such disclosure.”¹⁶³ Thus, the PGCPS Procedure restates that, “[u]nless the student or parent/guardian has specified otherwise, when contacting the parent/guardian of a transgender or gender diverse student, PGCPS school staff members should use the student’s legal name and pronoun that correspond to the student’s sex assigned at birth.”¹⁶⁴

The regulation instructs staff who believe they may be legally required to disclose a student’s “transgender or gender diverse status” to “consult with the Office of General Counsel prior to disclosure.”¹⁶⁵ Failure by PGCPS personnel to abide by these secrecy requirements “may result in disciplinary action.”¹⁶⁶

The PGCPS Procedure provides that “[s]tudents and staff shall have access to restrooms, locker rooms or changing facilities that correspond to their gender identity.”¹⁶⁷ Schools must offer to students who object to using their designated sex-separated locker room with someone of the opposite sex an “alternative,” such as “access to a single stall or gender-neutral facility; addition of a privacy partition or curtain; use of a nearby private restroom or office; or a separate changing

¹⁶⁰ PGCPS PROCEDURE, *supra* note 156.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* (emphasis added).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*



schedule.”¹⁶⁸ However, “transgender or gender diverse” students or staff members must be permitted to access whatever sex-separated or alternative facilities they desire:

A transgender or gender diverse student or staff member shall not be required to use a separate, non-integrated space when the student or staff member has not requested access to such a space. Under no circumstances shall students or staff be required to use sex-segregated facilities that are inconsistent with their gender identity.¹⁶⁹

The PGPCS Procedure contains the same provision as MCPS policy requiring staff to overrule and minimize the objections of students to sharing their private, sex-separated spaces with members of the opposite sex:

Some students or staff may feel uncomfortable with a transgender or gender diverse student or staff member using the same sex-specific facility. This discomfort is not a reason to deny access to the transgender or gender diverse student or staff member. School administrators should work with students and staff to address their discomfort to foster understanding of gender identity and to create a school and work culture that respects and values all students and staff.¹⁷⁰

With respect to overnight trips, the PGPCS Procedure is unequivocal and does not contemplate objections by students to sharing their bedrooms with students or staff members of the opposite sex:

Students and staff shall be granted access to housing facilities, restrooms and any other gender specific activity [on overnight trips] consistent with their gender identity. The school shall ensure that the transgender or gender diverse student or staff member is not isolated or otherwise marginalized.¹⁷¹

The PGPCS Procedure requires school staff to discuss “[s]tudent sleeping arrangements . . . with the student and family (if the family is supportive of the student).”¹⁷² It directs schools to provide, upon request, “a safe and non-stigmatizing alternative arrangement, such as a private sleeping area, if practicable, without isolating other students from their peers.”¹⁷³ It does not require the school to inform or receive input from students who do not identify as “transgender or gender diverse” or their parents with regard to sharing a bedroom with students or staff members of the opposite sex.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*



The PGCPS Procedure states unequivocally that “[a]ll students shall be permitted to participate in physical education classes, extracurricular activities, and interscholastic athletics consistent with their gender identity.”¹⁷⁴ For eligibility of “transgender and gender diverse” students to participate in interscholastic athletics, the policy points to guidelines issued by the MPSSAA and links to a handbook issued by the MPSSAA that does not contain the terms “transgender” or “gender diverse.”¹⁷⁵

Frederick County Public Schools

As of September 2024, FCPS reported that 48,054 students were enrolled in its schools.¹⁷⁶ It is a local education agency receiving federal funding and is thus bound by Title IX’s prohibition against discrimination on the basis of sex¹⁷⁷ and FERPA’s obligations with regard to access to education records.¹⁷⁸

Policy 443 of the FCPS Board of Education, entitled *Ensuring Inclusive School Environments for Transgender and Gender Diverse Students* (“FCPS Policy 443”), contains the local education agency’s policies carrying out MSDE’s and MPSSAA’s policies described *supra*.¹⁷⁹ The FCPS Board of Education adopted that policy in 2017, and it most recently updated the policy on December 10, 2025.¹⁸⁰ The policy cites State Board regulations regarding nondiscrimination, interscholastic athletics, and student records,¹⁸¹ and it refers to resources including MSDE’s October 2024 Guidance and December 2024 Guidelines, as well as the March 2025 Superintendent Memorandum.¹⁸²

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* (citing MD. PUB. SECONDARY SCHS. ATHLETIC ASS’N, MPSSAA HANDBOOK 2022–2023 (2022), available at https://www.mpssaa.org/assets/1/6/Handbook_22-23.pdf).

¹⁷⁶ *About*, FREDERICK CNTY. PUB. SCHS., <https://www.fcps.org/about> (last visited Feb. 10, 2026).

¹⁷⁷ *See supra* note 127.

¹⁷⁸ *See supra* note 128.

¹⁷⁹ FREDERICK CNTY. PUB. SCHS. BD. OF EDUC., ENSURING INCLUSIVE SCHOOL ENVIRONMENTS FOR TRANSGENDER AND GENDER DIVERSE STUDENTS (POLICY 443) (updated 2025) (hereinafter “FCPS POLICY 443”), available at <https://apps.fcps.org/legal/documents/443/history/432>; *see also Video: Policy 443*, FREDERICK CNTY. PUB. SCHS., https://www.fcps.org/board_of_education/policies_and_regulations/video_policy_443 (last visited Feb. 10, 2026) (describing Policy 443 and explaining that “the policy doesn’t mean much practical change in terms of how our schools work. In fact, in a lot of ways, this policy puts down on paper the good things we’ve already been doing for years in Frederick County”).

¹⁸⁰ FCPS POLICY 443, *supra* note 179, at 6.

¹⁸¹ *Id.* at 5.

¹⁸² *Id.* at 6.



FCPS Policy 443 states that its purposes include ensuring that FCPS schools “provide safe, welcoming and affirming learning environments for gender-diverse students—including those who are transgender, intersex, gender-questioning, and gender non-conforming”; create “clear expectations for how the school system will support gender diverse students in ways that protect their privacy, safety, dignity, and access to educational opportunities, while providing clear guidance for staff”; and “balance respect for student privacy and safety with supportive and meaningful family engagement, while acknowledging that students have the right to privacy and to discuss and express their gender identity and expression openly and to make decisions about where, when, and with whom to share private information while, at the same time, the [FCPS Board of Education] values the important role of parents and guardians and seeks to encourage constructive communication between schools, students, and families.”¹⁸³

FCPS Policy 443 provides the following definition of the term “Gender Diverse” as used throughout the policy:

“Gender Diverse” is defined to mean an individual whose gender identity, gender expression, or gender experience differs from traditional or societal expectations associated with the sex [he or she was] assigned at birth. This term includes, but is not limited to, students who identify as transgender, nonbinary, gender non-conforming, gender questioning, or intersex. The term is intended as an inclusive umbrella that recognizes the broad spectrum of gender identities and expressions.¹⁸⁴

The policy in turn defines “Gender Expression” as “the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms,” and it defines “Gender Identity” as “a person’s deeply held sense or psychological knowledge of [his or her] own gender, which can include being female, male, another gender, or no gender.”¹⁸⁵ It defines “Non-binary” or “Genderqueer” as “terms used by those who identify with neither, both, or a combination of genders.”¹⁸⁶ It defines “Transgender” as “an adjective describing a person whose gender identity or expression is different from that traditionally associated with an assigned gender at birth.”¹⁸⁷

FCPS Policy 443 states that the FCPS Board of Education “is committed . . . that [sic] all students will be provided equal access to curriculum, facilities, and extracurricular activities that align with their gender identity, with their gender expression, [sic] and are a sincerely held part of the student’s core identity.”¹⁸⁸ The FCPS Board of Education “affirms its commitment to providing

¹⁸³ *Id.* at 1.

¹⁸⁴ *Id.* at 1–2.

¹⁸⁵ *Id.* at 2.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*



all students, including gender-diverse students, with safe, fair, and respectful opportunities to participate in extracurricular activities, interscholastic athletics, and the FCPS corollary athletic program.”¹⁸⁹

FCPS Policy 443 prohibits FCPS staff from disclosing “that a student is transgender or gender diverse to anyone other than” school staff, a person to whom the student “expressly authorizes” such a disclosure, or law enforcement and medical and emergency personnel.¹⁹⁰ It provides the following with regard to concealing information about a student’s “transgender or gender diverse” status from a minor student’s parents:

The Board acknowledges the importance of parental involvement in the lives of their student but also recognizes the rights of students to share personal and private information at a time and place of their choosing. Accordingly, parents should be contacted whenever there is [sic] health, mental health or safety concern regarding the student. In all other circumstances, every effort should be made to encourage and support communication between students and the student’s parent. Staff may provide the student the opportunity to meet with an FCPS Mental Health Professional to discuss a communication plan, but the school’s role is to facilitate—not replace—the essential relationship between student and parent.¹⁹¹

The policy provides an exception only for students under 12 years old, as follows:

When students younger than 12 years old request a change in pronouns, name usage, or access to gender specific facilities, the school will notify the parents/guardians in a timely and supportive manner, recognizing the central role of parents in the care and development of younger children and consistent with Maryland law on minor consent for mental health treatment and confidentiality. Notification will be conducted in a manner that supports a student’s safety, affirms their dignity and seeks to promote collaboration between the family and school.¹⁹²

The policy also requires FCPS schools “to maintain an official student record of each student, which includes the legal name of the student and birth gender”; it states that “FCPS shall make available student records to parents upon request” in accordance with federal and state law.¹⁹³ While the policy may contemplate that the “student records” parents are entitled to access

¹⁸⁹ *Id.* at 3. The policy explains that the FCPS Corollary Athletic Program is an FCPS program not governed by MPSSAA requirements that combines students with and without disabilities. *Id.* at 1.

¹⁹⁰ *Id.* at 3.

¹⁹¹ *Id.*

¹⁹² *Id.* at 5.

¹⁹³ *Id.* at 4.



encompass something broader than the “official student record” containing the student’s legal name and “birth gender,” it does not specify the full scope of that term by defining “student record.”

FCPS Policy 443 requires training for FCPS personnel who work with students regarding, among other topics, “[t]he importance of privacy for all students, as well as an overview of the legal and other implications of disclosing gender identity to parents”; “[t]erms, concepts, and current developmental understandings of gender identity, gender expression, and gender diversity in children and adolescents”; and “[c]lassroom management practices, curriculum, and resources that educators can integrate into their classrooms to foster a more gender-inclusive environment for all students while ensuring the parental right to direct their child’s religious upbringing is respected.”¹⁹⁴

The policy provides that “[s]taff are expected to use a student’s preferred name and pronoun as provided [by a school list] in all school-related interactions” and states that those employees “who have a sincerely held religious objection” may only seek to opt out of doing so by requesting an accommodation through FCPS Title VII procedures.¹⁹⁵ The policy “encourages students to use their fellow students’ preferred names and pronouns as part of maintaining a respectful environment,” and states that “[i]ntentional or persistent use of names or pronouns, to target, bully, harass, or create a hostile environment” may violate FCPS bullying and harassment policies and be subject to discipline.¹⁹⁶

FCPS Policy 443 provides that “[a]ll students, including both transgender and gender diverse students, should have access to facilities (*i.e.*, restrooms, locker rooms) that are consistent with their gender identity, gender expression, and sincerely held part of their core identity.”¹⁹⁷ It directs FCPS schools to provide to any student “who is uncomfortable for any reason using a gender-segregated facility,” such as a child who objects to sharing his or her designated sex-separated bathroom or locker room with a member of the opposite sex, “with a safe and non-stigmatizing alternative,” such as “privacy partitions,” single-user restrooms or changing areas, or “a separate changing schedule.”¹⁹⁸ The policy forbids schools from requiring or directing a student to use a

¹⁹⁴ *Id.* at 5.

¹⁹⁵ *Id.* at 3. The policy limits such an “opt-out” on the basis that it “must not interfere with the student’s equal access to educational programs and activities, create a stigmatizing environment, violate Title IX, or materially disrupt school operations,” *id.*, leading one to wonder if, in practice, there is any circumstance in which FCPS would allow a staff member to opt out of using preferred names and pronouns on religious grounds.

¹⁹⁶ *Id.* at 4.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*



“private use facility.”¹⁹⁹ The policy contains the odd specification that “FCPS will ensure that all FCPS *multi-purpose* restrooms and locker rooms offer access to individual use stalls.”²⁰⁰

With regard to access to sex-separated athletics, FCPS Policy 443 acknowledges “the importance of safety and competitive fairness” in the same sentence as its blithe rejection of these concerns, stating that “students are permitted to participate in FCPS sports and physical education classes in a manner consistent with their gender identity and gender expression.”²⁰¹ It provides that “[t]he gender identity of student-athletes is not required to be disclosed to coaches, teammates, opponent’s [sic] coaches, or anyone else if not authorized by the student.”²⁰² The policy then presents a vague “exception” to the blanket rule of athletic participation on the basis of “gender identity” instead of sex:

In rare cases where concerns regarding competitive fairness or player safety arise, staff are authorized to address each situation on its individual merits, consistent with federal and State law, applicable athletic association guidance, and Board Policy. Any decisions shall prioritize the rights, privacy, and dignity of all student athletes, and consider all reasonable solutions that ensure equitable access to competition regardless of gender identity.²⁰³

Because the FCPS Board of Education policy requires participation in athletics on the basis of a person’s subjective and self-asserted “gender identity” (according to the policy’s definition of that term), it is impossible to see how school staff could address “concerns regarding competitive fairness or player safety” in a way that is consistent with the policy other than simply ignoring such concerns.

The FCPS Office of the Superintendent carries out FCPS Policy 443 through Regulation 400-36, entitled *Creating Welcoming and Affirming Schools for Transgender and Gender Nonconforming Students* and last amended in 2019 (“FCPS Regulation 400-36”).²⁰⁴ Regulation 400-36 largely echoes the language of Policy 443 above, with a few notable differences that may reflect that it has not yet been adjusted in light of the FCPS Board of Education’s recent changes to FCPS Policy 443.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* (emphasis added). It is possible that the FCPS Board of Education intended to use the term “multi-sex” rather than “multi-purpose.”

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ FREDERICK CNTY. PUB. SCHS. OFFICE OF THE SUPERINTENDENT, CREATING WELCOMING AND AFFIRMING SCHOOLS FOR TRANSGENDER AND GENDER NONCONFORMING STUDENTS 1 (amended 2019) (hereinafter “FCPS REGULATION 400-36”), available at <https://apps.fcps.org/legal/documents/400-36>.



For instance, FCPS Regulation 400-36’s definition of “Gender Identity” begins by tracking the corresponding FCPS Policy 443 definition of that term but adds that “[g]ender identity is an innate and *largely inflexible* part of a person’s identity. One’s gender identity can be the same or different than the gender assigned at birth. The responsibility for determining an individual’s gender identity *rests with the individual.*”²⁰⁵ On the other hand, in a provision relating to intimate-facilities access, the regulation seems to foreshadow dangers that may arise as a result of blindly trusting an individual’s assertion of “gender identity”: “If there is a credible basis for believing that the student is not asserting [his or her] authentic gender identity for the purpose of being disruptive or infringing on the rights of others, school administration has the responsibility to investigate as they would for any other behavior that is being disruptive and follow up with the student and/or parent accordingly.”²⁰⁶ The regulation offers administrators no guidance regarding how they can determine whether a person is falsely asserting an “identity” that, according to regulation’s definitions, is wholly subjective and whose determination, after all, rests with the individual in question.

Additionally, at its meeting on December 10, 2025, the FCPS Board of Education updated a separate policy, Policy 414, regarding school field trips (“FCPS Policy 414”).²⁰⁷ For overnight field trips, that policy provides that school staff should “[m]aximiz[e] students’ social integration” by, among other things, doing the following:

Make arrangements in consultation with the student, FCPS staff, and, *if supportive*, any gender diverse student’s parents. Be sensitive to the need to maintain the student’s privacy and not disclose or require disclosure of the student’s transgender or gender nonconforming status to the other students or their parents without the consent of the transgender or gender nonconforming student and/or the student’s parent.²⁰⁸

FCPS Policy 414 directs school staff to “[a]llow students the opportunity to room with others according to their gender identity” and to “[m]ake efforts to accommodate any student who desires greater privacy; however, no student should be isolated.”²⁰⁹

²⁰⁵ *Id.* (emphases added).

²⁰⁶ *Id.* at 4.

²⁰⁷ FREDERICK CNTY. PUB. SCHS. BD. OF EDUC., FIELD TRIPS (POLICY 414) (updated 2025) (hereinafter “FCPS POLICY 414”), available at <https://apps.fcps.org/legal/documents/414>.

²⁰⁸ *Id.* at 4 (emphasis added).

²⁰⁹ *Id.*



Federal Law and Recent Developments Under Title IX

Supremacy Clause and Preemption

The Constitution establishes that the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, *any Thing in the Constitution or Laws of any State to the Contrary notwithstanding*.”²¹⁰

Consistent with this principle, in its 2020 amendments to Title IX’s implementing regulations, described *infra*, the Department explicitly recognized the preemptive effect of the federal civil rights law and its regulatory framework, providing that “[t]o the extent of a conflict between State or local law and [T]itle IX as implemented by” regulatory provisions incorporated by the rule, “the obligation to comply with [such provisions] is not obviated or alleviated by any State or local law.”²¹¹ The Department has recently underscored that “[s]tate laws do not override federal antidiscrimination laws,” and regardless of state or local laws or policies, education agencies and schools “remain subject to Title IX and its implementing regulations.”²¹²

Thus, if the requirements of a state or local law conflict with those of a federal law—such as Title IX or FERPA—then federal law governs.

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.²¹³ 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.”²¹⁴

²¹⁰ U.S. CONST. art. VI, cl. 2 (emphasis added).

²¹¹ U.S. Dep’t of Educ., *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30,026, 30,573 (May 19, 2020) (hereinafter “2020 Rule”) (codified at 34 C.F.R. § 106.6(h)).

²¹² Press Release, U.S. Dep’t of Educ., Office for Civil Rights Launches Title IX Violation Investigations into Maine Department of Education and Maine School District (Feb. 21, 2025), available at <https://www.ed.gov/about/news/press-release/office-civil-rights-launches-title-ix-violation-investigations-maine-department-of-education-and-maine-school-district>.

²¹³ 20 U.S.C. § 1681(a).

²¹⁴ *Id.* § 1686.



The law also includes a provision directing federal agencies, including the Department, that provide federal financial assistance to education programs or activities to implement Title IX’s nondiscrimination mandate by “issuing rules, regulations, or orders of general applicability” applying the law and to effect compliance with these rules by withdrawing funding from federal funding recipients or “by any other means authorized by law.”²¹⁵ In 1974, Congress adopted the “Javits Amendment,” which required the Department’s predecessor to promulgate regulations to effectuate Title IX that included “with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.”²¹⁶

Since the Department’s predecessor first issued regulations in 1975 pursuant to these directives,²¹⁷ 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.”²¹⁸ These regulations have also specifically prohibited discrimination on the basis of sex in recipients’ athletic programs, while permitting them to operate separate teams “for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.”²¹⁹

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.²²⁰ 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.”²²¹ Most recently, in denying an application for a stay of two injunctions blocking the Department’s recent amendments to its Title IX implementing regulations, a *per*

²¹⁵ *Id.* § 1682.

²¹⁶ Pub. L. No. 93-380, Title VIII, Part D, § 844, 88 Stat. 612.

²¹⁷ See U.S. Dep’t of Health, Educ., & Welfare, *Nondiscrimination on the Basis of Sex Under Federally Assisted Education Programs and Activities*, 40 Fed. Reg. 24,128 (June 4, 1975) (codified at 45 C.F.R. pt. 86). The Department of Education, created in 1979, formally adopted and recodified the 1975 regulations without substantive changes when it began operations in 1980. 45 Fed. Reg. 30,802, 30,955–65 (May 9, 1980) (codified at 34 C.F.R. pt. 106).

²¹⁸ 34 C.F.R. § 106.33.

²¹⁹ *Id.* § 106.41(a)–(b).

²²⁰ See *Louisiana v. Dep’t of Educ.*, Amended Complaint, No. 3:24-CV-00563-TAD-KDM, at 10 (May 3, 2024) (citing *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality op.); *Sex*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2081 (1966) (“one of the two divisions of organic esp. human beings respectively designated male or female”); *Sex*, WEBSTER’S NEW WORLD DICTIONARY (1972) (“[E]ither of the two divisions, male or female, into which persons, animals, or plants are divided, with reference to their reproductive functions.”); *Sex*, AMERICAN HERITAGE DICTIONARY 1187 (1969) (“a. The property or quality by which organisms are classified according to their reproduction functions. b. Either of two divisions, designated *male* and *female*, of this classification.”)).

²²¹ *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).



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 amendments] 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.”²²²

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.”²²³ 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.”²²⁴

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.”²²⁵

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”²²⁶ 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.²²⁷

²²² *Dep’t of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024).

²²³ 20 U.S.C. § 1232g(a)(1)(A).

²²⁴ *Id.* § 1232g(a)(4)(A).

²²⁵ *Id.* § 1232g(b)(1)(A).

²²⁶ *Id.* § 1232g(b)(2).

²²⁷ *Id.* § 1232g(b)(4)(A).



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.²²⁸

The 2020 Title IX Rule

In 2020, the Department promulgated amendments to its regulations implementing Title IX (the “2020 Rule”).²²⁹ For the first time as a matter of regulation, the 2020 Rule recognized that federally funded educational institutions must address sexual harassment in their programs and activities, codified a definition of sexual harassment that tracks Supreme Court caselaw²³⁰ and includes single instances of sexual assault and similar conduct, and set out the basic standards for a grievance process that recipients must follow in campus disciplinary proceedings relating to allegations of sexual harassment.²³¹

Such a grievance process must include, as relevant to the MSDE policies identified *supra*:

- a provision prohibiting the Title IX Coordinator or the investigator of the allegations of sexual harassment from serving as the decisionmaker who determines whether the respondent is responsible for the alleged harassment;²³²
- no interference with the ability of parties to a Title IX grievance process to discuss the allegations of sexual harassment and to gather and present relevant evidence;²³³
- a requirement that the federal-funding recipient dismiss a formal complaint of sexual harassment when the conduct, even if proved, would not constitute sexual harassment under Title IX;²³⁴

²²⁸ *Id.* § 1232g(d). If a postsecondary student is claimed as a dependent by either parent for tax purposes, then either parent may have access. 34 C.F.R. § 99.31(a)(8).

²²⁹ 2020 Rule, *supra* note 211.

²³⁰ *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999) (defining peer-on-peer sexual harassment for which federal-funding recipients are liable for monetary damages pursuant to Title IX).

²³¹ 2020 Rule, *supra* note 211, at 30,030 (summarizing the major provisions of the 2020 Rule).

²³² *Id.* at 30,577 (codified at 34 C.F.R. § 106.45(b)(7)(i)). The 2020 Rule applies to the policies 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.

²³³ *Id.* at 30,576 (codified at 34 C.F.R. § 106.45(b)(5)(iii)).

²³⁴ *Id.* (codified at 34 C.F.R. § 106.45(b)(3)(i)).



- an equal opportunity for parties to a grievance process to present expert witnesses to provide evidence regarding Title IX sexual-harassment allegations;²³⁵
- an equal opportunity for both parties to inspect and review any evidence gathered in the investigation that is “directly related” to the allegations of sexual harassment;²³⁶
- in elementary and secondary schools, an opportunity for parties to submit to the institution written questions and follow-up questions that are relevant to the allegations of sexual harassment to be asked of another party or witness and to receive the answers to those questions;²³⁷
- a requirement that a “formal complaint” (*i.e.*, a written document signed by the person who is alleged to have been subject to sexual harassment or the Title IX Coordinator requesting an investigation of the Title IX sexual-harassment allegations) triggers an investigation of the allegations;²³⁸ and
- a definition of “sexual harassment” that includes single instances of sexual assault and similar conduct, *quid pro quo* staff harassment (*e.g.*, demanding sex as a condition of an aid, benefit, or service), and—consistent with Supreme Court caselaw—“[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 [federal-funding] recipient’s education program or activity”²³⁹

The Rise and Fall of the 2024 Title IX Rule

The Department finalized amendments to its regulations implementing Title IX (the “2024 Rule”) on April 29, 2024, with an effective date of August 1, 2024.²⁴⁰ Those amendments misinterpreted the law’s prohibition of “discrimination on the basis of sex” to prevent discrimination on the basis

²³⁵ *Id.* (codified at 34 C.F.R. § 106.45(b)(5)(ii)).

²³⁶ *Id.* (codified at 34 C.F.R. § 106.45(b)(5)(vi)).

²³⁷ *Id.* at 30,577 (codified at 34 C.F.R. § 106.45(b)(6)(ii)).

²³⁸ *Id.* at 30,574 (codifying the definition of “formal complaint” at 34 C.F.R. § 106.30(a)); *id.* at 30,575 (codifying the requirement that federal-funding recipients respond to a “formal complaint” by following the grievance process in compliance with the regulations at 34 C.F.R. § 106.44(b)(1)).

²³⁹ *Id.* at 30,574 (codified at 34 C.F.R. § 106.30(a)).

²⁴⁰ 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, 33,474 (Apr. 29, 2024) (hereinafter “2024 Rule”).



of an undefined “gender identity” in federally funded education programs and activities.²⁴¹ As a result, the 2024 Rule required recipients to prohibit discrimination on the basis of “gender identity” in all of their programs and activities, including in their athletic programs, and to allow any person to use whichever sex-separated bathroom or locker room corresponded with that person’s claimed “gender identity.”²⁴²

The 2024 Rule also expanded the regulatory definition of “sexual harassment” to require federally funded educational institutions to police pronoun usage and a broad range of “offensive” speech, empowered Title IX Coordinators to become roving monitors and enforcers against any perceived violation of the regulations, and eliminated key protections in the 2020 Rule that require institutions to offer a fair grievance process to students and faculty before disciplining them over allegations of sexual harassment—returning Title IX enforcement on campus to a “kangaroo court” model that reigned prior to the advent of the 2020 Rule.²⁴³

Federal district courts and courts of appeals across the country blocked the 2024 Rule because it contradicted Title IX and subverted a primary purpose of the law—to guarantee equal opportunities to women and girls in education—by expanding the scope of the law to apply to “gender identity” discrimination and requiring schools to permit males who identify as female to share bathrooms, locker rooms, and other sex-separated private facilities with women and girls.²⁴⁴ On August 16, 2024, the Supreme Court unanimously agreed that a preliminary injunction

²⁴¹ *Id.* at 33,886 (codified at 34 C.F.R. § 106.10).

²⁴² *Id.* at 33,887 (codified at 34 C.F.R. § 106.31(a)(2)); *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”).

²⁴³ See generally WISC. INST. FOR L. & LIBERTY, DEF. OF FREEDOM INST., & SE. LEGAL FOUND., PROTECTING TITLE IX: A RESOURCE GUIDE FOR SCHOOL BOARDS (2024), available at https://dfipolicy.org/wp-content/uploads/2024/11/Protecting_Title_IX_Resource_Guide_11_2024.pdf (describing for school boards the changes the 2024 Rule imposed in the Title IX regulatory framework applicable in the K–12 context).

²⁴⁴ See *Tennessee v. Cardona*, No. 24-5588, 2024 WL 3453880 (6th Cir. July 17, 2024); *Louisiana v. Dep’t of Educ.*, No. 24-30399, 2024 WL 3452887 (5th Cir. July 17, 2024); *Oklahoma v. Cardona*, No. CIV-24-00461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. Dep’t of Educ.*, No. 4:24-CV-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, No. 4:24-cv-00461-O, 2024 WL 3381901 (N.D. Tex. July 11, 2024); *Texas v. United States*, No. 2:24-CV-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024); *Kansas v. Dep’t of Educ.*, No. 24-4041JWB, 2024 WL 3273285 (D. Kan. July 2, 2024); *Tennessee v. Cardona*, No. 2:24-072-DCR, 2024 WL 3019146 (E.D. Ky. June 17, 2024); *Louisiana v. Dep’t of Educ.*, No. 3:24-CV-00563, 2024 WL 2978786 (W.D. La. June 13, 2024).



blocking the 2024 Rule’s “gender identity” provisions and the dramatic expansion of the regulatory definition of “sexual harassment” was an appropriate measure.²⁴⁵

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”²⁴⁶ 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.²⁴⁷ 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.”²⁴⁸

Trump Administration’s Correct Interpretation 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”).²⁴⁹ In that EO, the president declared that “[i]t is the policy of the United States to recognize two sexes, male and female,”²⁵⁰ 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.”²⁵¹ 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”²⁵² 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.”²⁵³

In Executive Order 14201 dated February 5, 2025, *Keeping Men Out of Women’s Sports* (“EO 14201”),²⁵⁴ President Trump directed the Secretary of Education to comply with the judicial

²⁴⁵ *Louisiana*, 603 U.S. at 867.

²⁴⁶ *Tennessee v. Cardona*, 762 F. Supp. 3d 615, 622–24 (E.D. Ky. Jan. 9, 2025).

²⁴⁷ *Id.* at 626.

²⁴⁸ *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, 2025 U.S. Dist. LEXIS 124115 *9 (N.D. Tex. Feb. 19, 2025).

²⁴⁹ Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

²⁵⁰ *Id.* at 8615.

²⁵¹ *Id.*

²⁵² *Id.* at 8616.

²⁵³ *Id.* at 8617.

²⁵⁴ 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.”²⁵⁵ 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.”²⁵⁶

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.”²⁵⁷ 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”²⁵⁸

The Department’s Recent Enforcement of Title IX

Enforcement Actions Against Northern Virginia School Districts

On July 25, 2025, OCR concluded its investigation of five school districts in Northern Virginia, 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 ‘gender identity.’”²⁵⁹ 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”²⁶⁰

²⁵⁵ *Id.* at 9279.

²⁵⁶ *Id.* at 9280.

²⁵⁷ 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).

²⁵⁸ *Id.* at 2.

²⁵⁹ 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>.

²⁶⁰ *Id.*



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.”²⁶¹

The Northern Virginia local education agencies declined to sign OCR’s proposed resolution agreements by OCR’s deadline of August 15, 2025.²⁶² 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.²⁶³ Fairfax County Public Schools and Arlington County Public Schools sued the Department in federal court in an attempt to block its decision to place them in high-risk status; 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, these local education agencies filed an appeal of the decision in the U.S. Court of Appeals for the Fourth Circuit.²⁶⁴

Finding of Noncompliance by Minnesota Department of Education

On September 30, 2025, the U.S. Department of Education and the U.S. Department of Health and Human Services issued a joint letter (“Joint Finding”) to the Minnesota Department of Education (“MDE”) and the Minnesota State High School League (“MSHSL”) concluding that these entities

²⁶¹ *Id.*

²⁶² 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>.

²⁶³ *Id.*

²⁶⁴ 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/>; <https://www.apsva.us/post/arlington-public-schools-files-appeal-on-court-decision-related-to-title-ix/>.



had violated Title IX by allowing males to compete in sports and use intimate facilities, such as locker rooms and bathrooms, designated for women and girls.²⁶⁵

The Joint Finding described the harms involved in policies granting access to school sports and intimate facilities on the basis of “gender identity” instead of sex as follows:

Allowing men and boys to compete in women’s and girls’ sports is demeaning, unfair, and dangerous to women and girls and denies females the same equal opportunity to participate and excel in competitive sports afforded to males. And allowing males to invade sensitive female-only spaces like locker rooms or bathrooms endangers women’s and girls’ safety, privacy, and dignity, while denying them equal access to educational activities or programs.²⁶⁶

The Joint Finding explains that when a recipient of federal funding “separates sports [or bathrooms] based on sex and also creates a special exemption to that general distinction for ‘gender identity’ [or for trans-identifying individuals], the recipient is no longer treating the sexes differently based on a sufficient justification. Because these recipients have thrown out the biological justification for sex separation, they are discriminating on the basis of sex by separating the sexes without a valid basis under Title IX.”²⁶⁷ In other words, allowing a biological male, for example, to use a girls’ locker room or participate in interscholastic sports designated for females destroys a state or local education agency’s entire justification for separating locker rooms or sports on the basis of sex. Such agencies are no longer engaging in permissible line-drawing between the sexes under Title IX—they are instituting arbitrary rules that have no basis in the statute.

The Joint Finding also explains that, beyond undermining the justification for separating sports and intimate facilities on the basis of sex in violation of Title IX, policies granting males access to school athletics and private spaces designated for females directly discriminates against females. With regard to sex-separated sports:

While men get sex-separated teams where they are competing against their physical equals, women get teams where they are facing unfair and unsafe competition from men with a physical advantage. Put differently, while male sports maintain fair and safe competition, females are forced to participate in unfair and unsafe competition,

²⁶⁵ Letter from Craig W. Trainor, Acting Ass’t Sec’y for C.R., U.S. Dep’t of Educ., & Paula M. Stannard, Dir., Off. for C.R., U.S. Dep’t of Health & Human Servs., to Willie Jett, Comm’r, Minn. Dep’t of Educ., et al. 2–3 (Sep. 30, 2025) (hereinafter “Joint Finding”), available at <https://www.ed.gov/media/document/ed-hhs-minnesota-title-ix-findings-112441.pdf>.

²⁶⁶ *Id.* at 2.

²⁶⁷ *Id.* at 16 (discussing the application of Title IX to “gender identity”-based sports policies); *id.* at 18 (discussing the application of Title IX to “gender identity” policies for intimate facilities).



where female athletes risk injuries, are displaced from podiums in athletic competitions, lose opportunities for advancement to regional and national competitions, and miss out on critical visibility for college scholarships and recognition. That unequal treatment is the denial of “equal athletic opportunity” in violation of Title IX.²⁶⁸

Concerning intimate facilities, the Joint Finding similarly declares that permitting boys to enter private spaces designated for girls “endangers girls’ privacy, dignity, and safety, causing a hostile and unsafe educational environment that denies girls educational opportunities.”²⁶⁹ Thus, the Joint Finding concludes that “Minnesota’s policies and practices have caused a hostile educational environment that denies women educational opportunities in violation of Title IX” because “[w]omen and teenaged girls have a privacy interest in using the bathroom away from men and teenaged boys, and in shielding their bodies from men and teenaged boys while changing in the locker room and on overnight stays for school activities.”²⁷⁰

The Joint Finding points out that the Department’s regulations require federal grant recipients to abide by federal law, including Title IX, as well as its implementing regulations and executive orders.²⁷¹ “[A]fter being informed by Executive Orders 14,168 and 14,201, and specific guidance that under Title IX [sic] from federal agencies, Minnesota has doubled own on their defiance,” including by continuing to require access to intimate facilities on the basis of “gender identity” rather than biological sex.²⁷² This defiance “is contrary to the assurances that the MDE has submitted to the federal government as a condition of federal funding, and conflicts with the plain language of” the Department’s regulations.²⁷³

The Joint Finding refers to a proposed resolution agreement between the federal agencies and MDE and MSHSL that would include actions remedying the discriminatory regime imposed by these entities’ sex-separated sports and intimate-facilities access policies. Absent such an agreement, the agencies “may begin enforcement action including referral to the U.S. Department of Justice or other means authorized by law,” including the suspension or termination of federal financial assistance.²⁷⁴ On January 26, 2026, the departments notified MDE and MSHSL that, due to their continued refusal to comply with Title IX in allowing males to access women’s and girls’

²⁶⁸ *Id.* at 17 (citing 34 C.F.R. § 106.41(c) and other sources).

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 49.

²⁷¹ *Id.* at 21.

²⁷² *Id.* at 54.

²⁷³ *Id.*

²⁷⁴ *Id.* at 61.



sports and intimate spaces, it had referred their case to the U.S. Department of Justice for enforcement action.²⁷⁵

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.”²⁷⁶ 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.²⁷⁷ 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.”²⁷⁸

The next day, March 28, SPPO launched an investigation to determine whether the Maine Department of Education (“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.²⁷⁹ 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

²⁷⁵ Press Release, U.S. Dep’t of Educ., U.S. Departments of Education and Health and Human Services Refer Minnesota Case to U.S. Department of Justice for Title IX Non-Compliance (Jan. 26, 2026), available at <https://www.ed.gov/about/news/press-release/us-departments-of-education-and-health-and-human-services-refer-minnesota-case-us-department-of-justice-title-ix-non-compliance>.

²⁷⁶ 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>.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ 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.²⁸⁰

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.”²⁸¹ 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.²⁸² “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.”²⁸³

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.²⁸⁴

SPPO 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.”²⁸⁵

Also on March 28, SPPO issued a Dear Colleague Letter (“SPPO 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”),²⁸⁶ including a cover letter authored by

²⁸⁰ *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).

²⁸¹ *Id.*

²⁸² *Id.* at 3–4.

²⁸³ *Id.* at 4.

²⁸⁴ *Id.*

²⁸⁵ *Id.* at 3.

²⁸⁶ 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.



U.S. Secretary of Education Linda McMahon.²⁸⁷ 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.²⁸⁸

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.²⁸⁹

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”²⁹⁰

²⁸⁷ 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.

²⁸⁸ *Id.* at 1.

²⁸⁹ SPPO Dear Colleague Letter, *supra* note 286, at 1–2.

²⁹⁰ *Id.* at 3.



On January 28, 2026, SPPO announced its determination that CDE is violating FERPA by pressuring school officials to conceal students’ “gender transitions” from their parents.²⁹¹ SPPO concluded that “California state laws, guidance, and legal actions . . . have effectively coerced districts to withhold information from parents in violation of FERPA,” and that “CDE coerces school districts to withhold information about students’ ‘gender identity,’ including through the use of secret ‘gender support plans’ kept in separate filing systems for the primary purpose of hiding these records from parents.”²⁹² The Department’s announcement cites evidence that California schools placed 300 or more students on “Gender Support Plans” and that, in many of these cases, parents had no knowledge of or opportunity to consent to their terms due to school secrecy policies.²⁹³

The Department’s announcement features a statement from Secretary McMahon denying the right of school districts to gag schools and personnel who wish to notify parents about their children’s psychological and emotional wellbeing: “Our investigation found that [CDE] egregiously abused its authority by pressuring school officials to withhold information about students’ so-called ‘gender transitions’ from their parents. . . . Children do not belong to the State—they belong to families. We will use every available mechanism to hold California accountable for these practices and restore parental rights.”²⁹⁴

The Department’s announcement identified several policy changes required by SPPO to permit CDE to voluntarily resolve its ongoing FERPA violations, including “[i]ssuing a notice to all superintendents and administrators informing them that ‘gender support plans’ or other related documentation that is directly related to a student are considered education records under FERPA and are subject to parental inspections upon request” and “[p]roviding written assurance to SPPO that CDE will allow [local education agencies] to enforce FERPA regarding ‘gender identity’ and pro-parental notification approaches in a manner that aligns with the needs of the districts to ensure compliance.”²⁹⁵

²⁹¹ Press Release, U.S. Dep’t of Educ., U.S. Department of Education Finds California Department of Education Violated Federal Law by Hiding Students’ “Gender Transitions” from Parents (Jan. 28, 2026), available at <https://www.ed.gov/about/news/press-release/us-department-of-education-finds-california-department-of-education-violated-federal-law-hiding-students-gender-transitions-parents>.

²⁹² *Id.*

²⁹³ *Id.* (citing Katelynn Richardson, *Blue State Schools Facing Trump Admin Investigation Helped Hundreds of Kids Change Their Gender Last Year*, DAILY CALLER NEWS FOUND. (Apr. 15, 2025), <https://dailycaller.com/2025/04/15/exclusive-blue-state-schools-facing-trump-admin-investigation-helped-hundreds-of-kids-change-their-gender-last-year/>).

²⁹⁴ *Id.*

²⁹⁵ *Id.*



Analysis

MSDE and the Maryland local education agencies MCPS, PGCPs, and FCPS maintain policies and practices that (1) require schools to allow students to participate in sex-separated athletics on the basis of such students' asserted "gender identity" instead of sex; (2) require schools to allow students to access sex-separated intimate facilities such as bathrooms and locker rooms on the basis of such students' asserted "gender identity" instead of sex; (3) require schools to allow students to select bedrooms and intimate facilities during school-sponsored overnight trips on the basis of such students' asserted "gender identity" instead of sex; and (4) gag school personnel to keep them from informing any minor student's parents about that student's decision to engage in "gender transitioning" at school unless the parents are supportive of that decision. Additionally, MSDE maintains Title IX sexual-harassment grievance procedures that do not comply with Title IX's implementing regulations, as currently applied by the Department (*i.e.*, those provisions codified by the 2020 Rule).

Rather than heed the plethora of court decisions in the past year recognizing, as the Department and OCR have done, that forcing schools to require girls and women to compete in sports and share intimate facilities and, on overnight trips, bedrooms with boys and men violates Title IX, MSDE and the school districts have chosen not to comply with the law, and state-government officials and entities, including MSDE, have warned school districts that they must continue to apply these policies or face potential sanctions under state law. Moreover, MSDE and the school districts have ignored SPPO's guidance and enforcement actions discussed *supra* by requiring school personnel to conceal from parents records regarding their minor children's desire to engage in "gender transitioning" in violation of FERPA. We respectfully ask that OCR and SPPO direct MSDE and the school districts to rescind these policies or face an enforcement action that will result in the termination, pursuant to Title IX and FERPA, of any and all of their federal funding or other sanctions, as appropriate.

MSDE Effectively Requires Maryland's Local Education Agencies to Implement "Gender Identity" Policies and Is Responsible for MPSSAA Policymaking

As an initial matter, MSDE has effectively coerced the local education agencies in Maryland to carry out its priorities with respect to "gender identity" and effectively nullified federal civil rights law and FERPA. As discussed *supra*, the State Board, which supervises the MSDE, "may institute legal proceedings to enforce" Maryland education law, as well as its "bylaws, rules, and regulations" ²⁹⁶ State Board regulations empower the State Superintendent to enforce the board's prohibitions against discrimination to Maryland's public elementary and secondary schools and nonpublic schools that receive state funds pursuant to Maryland law and to withhold

²⁹⁶ MD. CODE ANN., EDUC. § 2-205(d).



any and all state funding from such entities that the State Superintendent concludes have engaged in discrimination.²⁹⁷

Thus, labels such as “guidance,” “guidelines,” and “memorandum” aside, the documents issued by MSDE or the State Superintendent between October 2024 and March 2025 are in fact directives to local education agencies to comply with state entities’ official policies prioritizing “gender identity” over sex and require schools to conceal information about “gender transitioning” from minor students’ parents or risk losing all state funding. In sum, if MSDE interprets Maryland law to require access to sex-separated sports, bedrooms, and intimate facilities on the basis of “gender identity,” and to require school staff to conceal records regarding minor students’ “gender transitioning” from “non-supportive” parents, as set out in its recent communications, then all Maryland local education agencies have an overwhelming financial incentive to conform their policies to MSDE’s interpretations, no matter whether MSDE characterizes such interpretations as “guidance” or official policy.²⁹⁸ Insofar as these policies reflect the interpretation by MSDE of Maryland and federal law and regulations, the same holds true for the February 2025 AG Guidance, the March 2025 Commission Statement, and the July 2025 Joint Guidance: these documents have placed local education agencies on notice that they risk state funding if they abide by the current administration’s correct interpretation of Title IX.

Of course, consistent with the Supremacy Clause of the U.S. Constitution, Title IX and FERPA authorize and direct the Department and other federal agencies to enforce Title IX with regard to all federal-funding recipients, whether or not *state* agencies threaten their *state* funding if they choose to abide by these federal laws; however, the reach of MSDE’s coercive policies extends beyond the three school districts discussed in this complaint. In fact, MSDE is strong-arming each and every local education agency across the state to abide by its warped interpretations of state and federal law or risk state funding, thus grossly magnifying the harms caused by its Title IX and FERPA violations.

It is also clear that MPSSAA policies on access to sex-separated interscholastic high-school athletics represent MSDE policies, due to the level of control MSDE exercises over the MPSSAA. As explained *supra*, MPSSAA operates under MSDE’s Division of Instruction and carries out the State Board’s “rules and regulations governing athletic programs for all students in the Public

²⁹⁷ MD. CODE REGS. 13A.01.07.06(D)(4)-(5).

²⁹⁸ The language that MSDE uses in the publications identified *supra* belies any notion that these documents represent unenforceable “wish lists” of MSDE as opposed to a statement of enforceable policy. For instance, recall that the December 2024 Guidelines assert that “[i]t is *essential* for schools to take proactive steps in fostering an inclusive environment for gender diversity. Every student deserves the *right* to have [his or her] gender, gender identity, and gender expression acknowledged and respected by the school community.” *Supra* note 82 (emphases added). This is the language of coercion, not mere persuasion.



Secondary Schools of Maryland.”²⁹⁹ MSDE’s interscholastic-athletics administrator serves as MPSSAA’s director, and MSDE administers the revenue account where MPSSAA deposits the revenues it generates through its operations.³⁰⁰ Moreover, State Superintendent regulations ultimately govern MPSSAA members’ criteria for student eligibility to participate in interscholastic high-school athletics.³⁰¹ Thus, MSDE controls the policies of MPSSAA with regard to access to sex-separated interscholastic high-school sports.

Although the Maryland Attorney General, the Maryland Commission on LGBTQIA+ Affairs, and the Maryland Commission on Civil Rights, so far as DFI is aware, do not operate federally funded education programs or activities and are not educational agencies or institutions that subject them to the requirements of Title IX or FERPA, their interpretation of the law as expressed in the guidance identified *supra* is relevant to the present complaint to the extent that it corresponds with and clarifies the interpretation by MSDE and the local school districts of their legal obligations.

MSDE, MCPS, PGCPs, and FCPS Policies Requiring Schools to Grant Access to Athletics Programs on the Basis of “Gender Identity” 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 participate in whatever sex-separated athletic opportunities they choose based on their asserted “gender identity.”

As discussed *supra*, MPSSAA, operating under the supervision and control of the State Board and MSDE, has issued a policy requiring its 200 member schools to “provide for the opportunity for all students to participate in interscholastic athletics in a manner that is consistent with their gender identity, irrespective of the gender listed on a student’s records.”³⁰² Despite MPSSAA’s removal of a link to this guidance from one of its webpages,³⁰³ it has made no announcement of which we are aware that it has rescinded this policy or issued any superseding policy. MSDE specifically cited this policy in its October 2024 Guidance and stated that “[e]ach school system should develop and apply criteria for students to participate on interscholastic athletic teams consistent with their bona fide gender identity.”³⁰⁴ Thus, the State Board and MSDE require female athletes in the hundreds of high schools to which this policy applies to compete in sex-separated athletic events against boys and men who identify as female, subjecting girls and women to potential injury and

²⁹⁹ *Supra* note 16.

³⁰⁰ *Supra* note 18.

³⁰¹ MD. CODE REGS. 13A.06.03.02. Such regulatory criteria do not establish student eligibility to participate in sex-separated sports on the basis of “gender identity” as opposed to sex.

³⁰² *Supra* note 42.

³⁰³ *Supra* note 46.

³⁰⁴ *Supra* note 74.



demeaning treatment and stripping away any Title IX-compliant justification these entities have for separating sports on the basis of sex.

In finding that the Minnesota Department of Education had violated Title IX for such policies forcing female athletes to compete against any individual who subjectively identifies as female in school sports, the Department pointed to the specific harms women and girls suffer when they must compete against men and boys in athletic competitions: injuries, displacement from podiums and awards, cooption of opportunities to compete in regional and national events, and deprivation of college scholarships and recognition.³⁰⁵ Men and boys who must compete against females in their sex-separated sports, on the other hand, are not subject to such harms, leading to a crucial asymmetry between male and female sports that denies female athletes “equal athletic opportunity” as required by Title IX. Thus, like the Minnesota Department of Education, MSDE policies directly discriminate against female athletes in violation of federal civil rights law.

Department regulations implementing Title IX prohibit federal-funding recipients from discriminating against anyone in their athletics programs on the basis of sex. The regulations then specify that the practice of “operat[ing] or sponsor[ing] separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport” does not violate Title IX.³⁰⁶ But, here and in the case of the Minnesota policies on access to sex-separated sports, schools are not actually operating or sponsoring “separate teams for members of each sex”—as members of either sex can participate on either team depending on the sex with which they assert that they “identify.” Thus, MSDE is not actually engaged in permissible *sex-separated* separation of athletics teams in competitive or contact sports in compliance with the regulations; its policies require schools to combine teams based on arbitrary and subjective self-identification by the athletes. It can claim no justification for its policies under the Title IX implementing regulations regarding sex-separated athletics teams or any other provision of the law.

MCPS, PGCPs, and FCPS have each either pegged their interscholastic athletics policies to MPSSAA policy—as currently described in that body’s 2016 Guidance—or explicitly require schools to allow students to access sex-separated sports on the basis of “gender identity.”³⁰⁷ These local education agencies similarly require that, where intramural sports and PE classes are separated based on sex, students must have access to those activities and classes on the basis of their asserted “gender identity” rather than sex.³⁰⁸ Thus, MCPS, PGCPs, and FCPS are denying to their female students equal athletic opportunities by requiring them to compete against and participate in sex-separated athletics and PE activities on the basis of “gender identity” instead of sex in violation of Title IX and its implementing regulations.

³⁰⁵ *Supra* note 268.

³⁰⁶ 34 CFR § 106.41(b).

³⁰⁷ *Supra* notes 141 (MCPS), 153 (PGCPs), & 201 (FCPS).

³⁰⁸ *Supra* notes 140 (MCPS), 153, (PGCPs), & 201 (FCPS).



MSDE, MCPS, PGCPs, and FCPS Policies Requiring Access to Intimate Facilities on the Basis of “Gender Identity” Violate Title IX

MSDE’s and the School Districts’ Policies Condition Access to Education on the Deprivation of Dignity and Privacy

Just as Title IX forbids federal-funding recipients from discriminating against students on the basis of sex in athletic opportunities, it prohibits them from conditioning access to sex-separated intimate facilities, such as bathrooms, locker rooms, and other changing spaces, on sharing such spaces with members of the opposite sex. Yet this is exactly what MSDE, MCPS, PGCPs, and FCPS require.

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.³⁰⁹ 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 MSDE and the school districts 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,” “gender non-conforming,” “gender-questioning,” “gender-diverse,” “non-binary,” or “genderqueer”—can trump that binary, biologically based paradigm of federal law.

Thus, Title IX requires those institutions that it binds, including MSDE, MCPS, PGCPs, and FCPS, to recognize the dignity of boys and girls in maintaining their privacy. By implementing policies to the contrary, MSDE and the school districts are subverting the original meaning and

³⁰⁹ 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).



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 the policies of the Northern Virginia school districts and of the Minnesota entities (MDE and MSHSL) requiring access to intimate facilities on the basis of “gender identity” instead of sex violate Title IX. Those Minnesota entities, like MSDE and the local education agencies identified here, bind school and district employees to transgress the mandates of Title IX and discriminate against students on the basis of sex. There are multiple ways in which one might characterize the MSDE and district policies on intimate-facilities access as violative of Title IX—arbitrary line-drawing that robs them of sufficient justification to maintain separate intimate facilities for each sex and thus gives rise to prohibited sex discrimination,³¹⁰ exposure of children to a hostile environment on the basis of their sex by requiring them to use intimate facilities with an individual of the opposite sex,³¹¹ or basic discrimination on the basis of sex by, in this case, conditioning continued access to equal educational opportunities for students on divesting their dignity and privacy in the locker room that is designated for their sex. No matter how one characterizes the harm caused by these policies, they must fall in the face of the law’s nondiscrimination guarantee.

Neither M.A.B. nor Grimm Alters MSDE’s or the Districts’ Obligation to Abide by Title IX

To justify MSDE’s demeaning policies requiring intimate-facilities access on the basis of “gender identity”—and, more broadly, all MSDE policies requiring schools to prioritize a right against “gender identity” discrimination over other rights—February 2025 publications issued by State Superintendent Wright and Attorney General Brown both cited the Fourth Circuit Court of Appeals decision (and, tellingly, misspelled in the same manner) *Grimm v. Gloucester County School Board*,³¹² finding that a school district’s exclusion of a girl who identified as male from boys’ bathrooms violated Title IX and the Equal Protection Clause.³¹³ These officials may have also attempted to rely on the reasoning of a similar decision by the U.S. District Court for the District of Maryland, *M.A.B. v. Board of Education of Talbot County*, concluding that a biologically female high-school student who identified as male had sufficiently stated a claim that the school district’s policy excluding the student from boys’ locker room violated the Equal Protection Clause³¹⁴ and

³¹⁰ See *supra* note 267 and accompanying text.

³¹¹ See *supra* notes 268–70 and accompanying text.

³¹² *Supra* notes 96, 104.

³¹³ *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 593 (4th Cir. 2020).

³¹⁴ U.S. CONST. amend. XIV, § 1.



Title IX.³¹⁵ Reliance on either of these cases does not excuse the defiance of MSDE or the school districts in violating students’ right to equal educational opportunities under Title IX.

Taking *M.A.B.* first, the district court in that case initially distinguished “birth sex” from “gender identity,” defining the former in objective terms (“the appearance of the person’s external genitalia” at birth) and the latter as a “deeply-held internal sense of [one’s] own gender.”³¹⁶ Then, faced with clear Title IX statutory and regulatory language permitting schools to provide separate “living facilities” (including, as specified in the regulations, bathrooms and locker rooms) on the basis of “sex,”³¹⁷ the district court simply blew past this important distinction, stating that the regulation “is silent as to how a school should determine whether a transgender individual is a male or female for the purpose of access to *sex*-segregated restrooms.”³¹⁸ This was the court’s fundamental error in its analysis of the access to intimate facilities on the basis of “gender identity,” for if it had given the term “sex” its plain meaning—a meaning the court had already identified by referencing “birth sex,” without any apparent qualms, previously in its opinion—its inquiry would have been at an end. As discussed *supra*, Title IX and its regulations explicitly contemplate that intimate facilities like locker rooms will be separated on the basis of *sex*, a practice observed consistently since before the founding of the American Republic, and even since ancient times, and based on observable, objective, and biological traits as Congress indisputably contemplated when it used the term “sex” in Title IX in 1972.³¹⁹ Once “sex” in Title IX is read according to its meaning, the rest of the district court’s flawed analysis falls away, since Title IX explicitly recognizes schools’ authority to impose separation of boys and girls with regard to locker-room access and, naturally, to exclude girls from boys’ locker rooms and vice versa—since, if it were otherwise, there would be no “separation.”³²⁰

³¹⁵ *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 708–09, 726 (D. Md. 2018). While it denied the district’s motion to dismiss *M.A.B.*’s Title IX and constitutional claims, the court also denied *M.A.B.*’s motion for a preliminary injunction against the school’s intimate-facilities-access policies. *Id.* at 708.

³¹⁶ *Id.*

³¹⁷ 20 U.S.C. § 1686; 34 C.F.R. § 106.33.

³¹⁸ *M.A.B.*, 286 F. Supp. 3d at 712 (emphasis added) (citing *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 720 (4th Cir. 2016), *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017)).

³¹⁹ See *supra* notes 220, 221.

³²⁰ This complaint focuses on the court’s Title IX analysis because that is the statute OCR is charged with enforcing; however, because the Equal Protection Clause was never intended to imperil the separation of intimate facilities such as bathrooms or locker rooms on the basis of sex—and as the concept of “gender identity” was even more alien to the norms and scholarship of 1868 than it was in 1972—the *M.A.B.* court’s constitutional analysis suffers from the same flaws and cannot hold up under scrutiny. The Supreme Court’s majority opinion in *United States v. Skrametti*, 145 S. Ct. 1816 (2025), is instructive on this score. In concluding that a state law



Quite simply, finding that a biological girl and a biological boy who identifies as a girl are “similarly situated” for the purpose of Title IX (or, for that matter, the Equal Protection Clause) makes no sense under a regime governed by Title IX, which was written in 1972, when there was no doubt about the meaning of “sex” as a biological, binary concept. This is especially clear in light of the cascade of federal court rulings against the 2024 Rule finding that sex as used in the law is indeed about biology rather than an “internal sense” of one’s gender.³²¹ Even the Supreme Court weighed in to approve *unanimously* the issuance of preliminary injunctions blocking the 2024 Rule’s provisions redefining “discrimination on the basis of sex” to include unequal treatment based on “gender identity” and requiring access to intimate facilities to be based on “gender identity” instead of sex.³²² If a case with the same facts as *M.A.B.* came before the U.S. District Court for the District of Maryland today, the court would have to revisit its decision in light of the many recent precedents to the contrary.

In reaching its unsupportable outcome, the *M.A.B.* court offered a mislaid distinction between the biological girl’s *right* to use the boys’ locker room to change clothes and the boys’ *option* to use single-user facilities. Of course, the district court’s reasoning on this matter—stating that the school district’s policy discriminated against individuals on the basis of “transgender” status—ignores that the policy makes no such distinctions on the basis of that status. The policy offered all individuals in the relevant school district, whether or not they identified as a “gender” corresponding with their biological sex (or some other “gender”)—the same “rights” and “options”: the right to use the intimate facility that corresponded with their biological sex and the option to access a single-use facility. The distinction turns not at all on one’s “gender identity” but solely on one’s sex.

This distinction also falls woefully short in describing the “options” students face when they are confronted by an individual of the opposite sex entering their sex-separated bathroom, locker

banning certain medical treatments of gender dysphoria in minors was not subject to heightened review under the Equal Protection Clause, *id.* at 1829, the Court relied on the fact that the law “does not exclude any individual from medical treatments on the basis of transgender status but rather removes one set of diagnoses—gender dysphoria, gender identity disorder, and gender incongruence—from the range of treatable conditions,” with “transgender” individuals on each side of the divide that the law creates. *Id.* at 1833. Similarly, policies that separate bathrooms on the basis of sex do not depend on one’s “transgender” status but only on one’s biological sex; thus, some individuals with a “gender identity” that does not match their biological sex will be excluded from the boys’ locker room, while others will be permitted to use the boys’ locker room. The dividing line does not depend on “gender identity” at all; the only relevant issue is whether public schools can exclude girls from boys’ facilities and vice versa—an authority that such schools have always possessed.

³²¹ See *supra* note 244.

³²² *Supra* note 245.



room, or changing facility. The court’s opinion ignores that many such students feel that the presence of someone of the opposite sex in their designated space leaves them with only *one* option—not to change clothes in that locker room, with the stigma, inconvenience, and other harm that this option incurs. This is not a choice at all; it is the prioritization of the demands of a student who does not wish to use the intimate facility designated for his or her sex over the privacy and dignity of other students who quite sensibly and sincerely wish to use intimate facilities with others who share their sex.

Turning to *Grimm*, the Fourth Circuit Court of Appeals’ reasoning in that case, which involved sex-based access to school bathrooms, suffers from precisely the same shortcomings as that of *M.A.B.* (which dealt with locker rooms), including that it conflates biological sex with “gender identity” in interpreting Title IX’s express support for school policies permitting the separation of bathrooms based on “sex.” According to *Grimm*, the Department’s implementing regulation specifically recognizing that federal-funding recipients may separate intimate facilities on the basis of sex “cannot override the statutory prohibition against discrimination on the basis of sex. All it suggests is that the act of creating sex-separated restrooms in and of itself is not discriminatory—not that, in applying bathroom policies to students like Grimm, the Board may rely on its own discriminatory notions of what ‘sex’ means.”³²³ Again disparaging the notion of sex as a biological concept—which is indisputably how anyone would have interpreted that term when Congress employed it as the centerpiece of Title IX in 1972—the court asserted that, “[r]ather than contend with Grimm’s serious medical need, the Board relied on its own invented classification, ‘biological gender,’ for which it turned to the sex on his birth certificate.”³²⁴ Because Title IX specifically allows federally funded educational entities to maintain separate restrooms for each sex, naturally including the right to exclude individuals from restrooms not designated for their sex, *Grimm*’s holding directly contradicts that law.³²⁵

Regardless of how Maryland’s federal district court or the Fourth Circuit Court of Appeals would treat such a case today, Congress has charged the Department with the statutory responsibility to implement Title IX. That law directs the Department to issue “rules, regulations, or orders of

³²³ *Grimm*, 972 F.3d at 618.

³²⁴ *Id.* at 619.

³²⁵ *See id.* at 628 (Niemeyer, J., dissenting) (“Contrary to Grimm’s claim, Title IX and its regulations explicitly authorize the policy followed by the High School. While the law prohibits discrimination on the basis of sex in the provision of educational benefits, it allows schools to provide ‘separate living facilities for the different sexes,’ 20 U.S.C. § 1686, including ‘toilet, locker room, and shower facilities,’ 34 C.F.R. § 106.33. Gloucester High School followed these provisions precisely, going yet further by providing unisex restrooms for those not wishing to use the restrooms designated on the basis of sex. . . . At bottom, Gloucester High School reasonably provided separate restrooms for its male and female students and accommodated transgender students by also providing unisex restrooms that any student could use. The law requires no more of it.”).



general applicability” to implement Title IX and to effect compliance with these rules by withdrawing funding from recipients or “by any other means authorized by law.”³²⁶ And OCR’s recent enforcement actions pursuant to Title IX leave no doubt that it interprets Title IX to prohibit state and local education agencies from forcing school staff to allow access to locker rooms and other intimate facilities on the basis of “gender identity” instead of biological sex. Moreover, Department regulations require federal-funding recipients to abide by the administration’s interpretations of the law as set out in relevant executive orders, such as EO 14168 and EO 14201.³²⁷ To comply with its policies and continue to receive federal funding, MSDE and the school districts must rescind their “gender identity” policies to ensure that sex-separated intimate facilities are in fact separated on the basis of sex.

MSDE, MCPS, PGCPs, and FCPS Policies Requiring Access to Bedrooms and Intimate Facilities on Overnight Trips Violate Title IX

For the same reason that Title IX does not permit state or local education agencies to require schools to allow access to sex-separated facilities on the basis of “gender identity,” a policy conditioning participation in an overnight trip on sharing a bedroom and bathroom with other students on the basis of asserted “gender identity” instead of sex cannot survive scrutiny under the law. MSDE, MCPS, PGCPs, and FCPS require exactly this and are thus flouting their obligation to provide equal educational opportunities under Title IX.

MSDE’s October 2024 Guidance plainly directs Maryland schools to “[a]llow students the opportunity to room with others according to their gender identity” on overnight trips, and provides for consultation with “the student” (*i.e.*, the student whose asserted “gender identity” does not match his or her sex) in determining the student’s desired lodging. MSDE’s policy envisions concealing from minor students and their parents the biological sex of the students with whom they will share a bedroom,³²⁸ thus nullifying any effort on the part of the school to “accommodate” students who do not wish to share a bedroom with someone of the opposite sex (for how will such students know that they have been assigned to a room with such a person?). MCPS, PGCPs, and FCPS policies and regulations echo this MSDE mandate, requiring bedroom assignments for overnight trips to be based on a student’s asserted “gender identity” and failing to address meaningfully the objections of those students who wish to share bedrooms with those of the same sex.

These policies produce privacy and safety concerns that are even greater in magnitude than those that plague MSDE’s and the local school districts’ policies on access to intimate facilities. These state and local education agencies require schools to force students to share bedrooms with

³²⁶ 20 U.S.C. § 1682.

³²⁷ *Supra* note 271.

³²⁸ *Supra* note 65.



students of the opposite sex. Under some (but not all³²⁹) of the policies, if the student happens to know that one of his or her prospective roommates is a member of the opposite sex, he or she can request to be placed elsewhere—a request to be denied if it “isolates” the other student; however, school districts are under what is essentially a gag rule not to disclose the sex of these roommates, so in many cases, students may not know the student’s sex until they are in the same bed.

Pervading all of this through-the-looking-glass policy is a factor affecting these students’ decision-making that will be obvious to anyone, including no doubt to MSDE officials and the school-district leaders: Students will be intimidated from objecting to sharing a bedroom with a classmate of the opposite sex because they rightly fear that, if they do so, they will be vilified by school administrators, teachers, and most of all their classmates for the supposedly bigoted failure to “respect” the other student’s assertion of his or her “gender identity.” Thus, MSDE and the school districts impose a culture of silence on children who, a mere 10 years ago, would have been *protected* by the adults in their school communities if they spoke out against attempts by someone of the opposite sex to share a bedroom with them over their objections.

Over the past decade, the expectations of the adults at MSDE and the school districts have apparently changed, but the mandates of Title IX have not. That law binds MSDE, MCPS, PGCPs, and FCPS, and prohibits them from denying the right of students to sleep in a bedroom with only members of their own sex.

MSDE, MCPS, PGCPs, and FCPS Require School Staff to Conceal Information About Minor Students’ “Gender Transitioning” from Parents in Violation of 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.”³³⁰ In the case of MSDE and each school district discussed above, their policies, guidance, and related materials show that they impose a “gag order” requiring employees in at least some instances to 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.

MSDE’s October 2024 Guidance, Companion Document, December 2024 Guidelines, and March 2025 Superintendent Memorandum all direct school personnel to conceal from parents information about their minor child’s “gender transitioning” process if the parents may not be “supportive” of the child’s decision, for instance, to change the name and pronouns by which he or she is addressed at school or access intimate facilities that are designated for the opposite sex. The policies set forth in these documents perversely require school staff to collude with students to hide this information

³²⁹ PGCPs offers no such opt-out. *Supra* note 171.

³³⁰ *Supra* note 223 and accompanying text.



from their parents—instructing such staff, for instance, to “[p]rivately ask students how they want to be addressed in class and whether this will be different when in correspondence to the home or at conferences with the student’s parents or guardians.”³³¹ The October 2024 Guidance and December 2024 Guidelines subvert parental rights and undermine FERPA by claiming, wrongly, that there is a “balance between students’ rights to privacy and parents’ rights to information in the educational environment,”³³² when, under FERPA, student and parental rights to privacy and information are *one and the same*—*i.e.*, schools and children have no right exclude parents’ from crucial information about educational decisions or especially about their psychological or emotional wellbeing. The October 2024 Guidance refers to federal-court decisions ruling that “schools should not disclose sensitive information such as sexual orientation to parents without a legitimate stated interest to do so,” but fails to cite a single ruling that does so.³³³ Even if MSDE can point to such a federal-court decision, complying with FERPA’s mandate that parents have access to the records of their minor children—not to mention upholding a parent’s constitutional right to be apprised of school decisions related to a minor child and such weighty matters as those involving the child’s safety and emotional and psychological health³³⁴—certainly constitutes a “legitimate” interest of every elementary and secondary school.

The Companion Document and March 2025 Superintendent Memorandum offer an additional, major cause for concern about MSDE policies, advising school personnel that “[s]chools are generally not required to disclose this information [regarding a minor child’s “gender transitioning” process] unless it is recorded in an *official* record and requested by a parent.”³³⁵ Thus, the guidance appears to be subverting parental rights by pushing school staff either not to record requests by minor children to change the names and pronouns by which they are addressed at school *or* to put documentation about such discussions somewhere other than the student’s “official” file—where parents allegedly cannot access it. But any distinction between “official” versus “unofficial” records has no place in FERPA, which requires that schools grant parents access to any and all “education records” they request. Maintaining a secret, “unofficial” file of education records to which parents do not have access is a violation of FERPA and of parents’ rights to direct the education and upbringing of their minor children.

The Maryland Attorney General and the Maryland Commission on LGBTQIA+ Affairs have issued guidance that reflects and reinforces the policies of MSDE requiring the concealment of “gender transitioning” records from the parents of minor students. Attorney General Brown, for

³³¹ *Supra* note 67.

³³² *Supra* notes 68, 89; *see also* Mar. 2025 Superintendent Memorandum, *supra* note 111, at 2 (“It is essential for school staff to strive for balance when navigating how information is shared” regarding a child’s decision to change his or her name and pronouns at school.).

³³³ *Supra* note 69.

³³⁴ *See Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925) (recognizing the right of parents and guardians “to direct the upbringing and education of children under their control”).

³³⁵ *Supra* note 78 (emphasis added).



instance, referred supportively to MSDE’s October 2024 Guidance, including the gag orders on teachers and administrators contained in that guidance, as “elaborat[ing] on Maryland regulations that mandate nondiscrimination in education”³³⁶ In its March 2025 statement, the Maryland Commission on LGBTQIA+ Affairs, in line with MSDE’s directives, identified as a “right” of students who do not identify with their sex “protections from forced outing policies,” which the commission warned “put trans youth at risk of family rejection, homelessness, and violence.”³³⁷

All three local education agencies identified in this complaint have adopted policies that, either fully or to an extent, accord with the secrecy requirements of MSDE’s directives. MCPS and PGCPs both instruct school staff to condition informing parents about a minor child’s decision to change the names and pronouns by which he or she is addressed at school on “the level of support the student either receives or anticipates receiving from home.”³³⁸ These school district policies instruct staff to “support the development of a student-led plan [with respect to the child’s “transitioning” process] that *works toward* inclusion of the family, *if possible*, taking safety concerns into consideration *as well as student privacy*, and recognizing that providing support for a student is critical, even when the family is nonsupportive.”³³⁹ Again, these policies imagine a privacy right of the minor student vis-à-vis the student’s parents with regard to health and safety information that simply does not reflect FERPA requirements or, more broadly, the constitutional rights of parents. They invert the law by not only supplanting the minor child’s parents with school staff as collaborators on difficult social, emotional, and psychological issues the child faces, but, even more reprehensibly, by effectively gagging any school personnel from discussing these issues with parents who fully support their child’s health and welfare but may not believe that it is healthy, safe, or consistent with their religious or philosophical tenets for the child to identify with a “gender” that does not correspond with the child’s sex.³⁴⁰ This is wrong and, to the extent that it requires school staff not to comply with parental requests for their minor children’s education records (including for information regarding “support plans”), violates FERPA.

Adopted in December 2025, FCPS Policy 443 diverges in some important respects from the gag orders imposed by MCPS and PGCPs but reinforces them in other ways—especially for minor teenaged students. For students 12 years old or older who express a desire to change the names

³³⁶ *Supra* note 105.

³³⁷ *Supra* notes 108, 109.

³³⁸ *Supra* notes 131, 160.

³³⁹ *Supra* notes 132, 160 (emphases added); *see also* PGCPs PROCEDURE, *supra* note 156 (“If requested, the principal/designee, in collaboration with the student and the student’s family (*if the family is supportive of the student*), shall develop a plan to ensure that the student has equal access and equal opportunity to participate in all programs and activities at school and is otherwise protected from gender-based discrimination at school.”) (emphasis added).

³⁴⁰ At least in the case of PGCPs, the school district explicitly threatens “disciplinary action” against any school staff member who does not comply with its gag order. PGCPs PROCEDURE, *supra* note 166.



and pronouns by which they are addressed at school, FCPS Policy 443 requires the same kind of unlawful “balancing” test as the other school districts with respect to whether it is appropriate to share information with their parents, directing school personnel to “balance respect for student privacy and safety with supportive and meaningful family engagement, while acknowledging that students have the right to privacy and to discuss and express their gender identity and expression openly and to make decisions about where, when, and with whom to share private information while, at the same time, the [FCPS Board of Education] values the important role of parents and guardians and seeks to encourage constructive communication between schools, students, and families.”³⁴¹

This gobbledygook represents the same misunderstanding as that in the MCPS and PGCPs policies of a supposed “balance” that must be struck between a minor child’s privacy rights regarding “gender identity” and parents’ right to information about their child’s education, health, and safety, ignoring the fact that parents and their minor children *share* this right to privacy and that it cannot be weaponized *against the parent* to “protect” a child from parents’ fundamental charge to support, direct, advise, and love them in the manner only they know best, whether under FERPA or any other law. Thus, FCPS’s requirement that staff conceal “gender transitioning” information from parents—apparently aside from “whenever there is [sic] health, mental health or safety concern regarding the student”³⁴²—sweeps far too broadly and, to the extent that it prohibits the sharing of minor student’s education records at the request of their parents, violates FERPA.

Additionally, the vagueness of FCPS Policy 443 with regard to whether a parent is entitled, upon request, to access all of the student’s education records or only a student’s “official” record containing his or her legal name and “birth gender”³⁴³ presents the same concerns as the reference in MSDE guidance to “official records” that parents may access. Under FERPA, parents are entitled to access all of their minor child’s “education records” they request; concealing records in an “unofficial” file to which parents have no access unequivocally violates federal law.

Perhaps recognizing the abject cruelty of preventing elementary-school staff, including kindergarten teachers, from informing parents about their child’s request to socially “transition,” unlike MCPS and PGCPs, FCPS explicitly requires its schools to notify parents in a “timely and supportive manner” when their child under the age of 12 requests to change the name or pronouns by which he or she is addressed or the sex-separated facilities he or she uses at school.³⁴⁴ But while such a policy steps back from the abyss of utter callousness required to keep parents in the dark about their young child’s health and safety at school, it makes a distinction between children under

³⁴¹ *Supra* note 183; *see also id.* at 3 (“The Board acknowledges the importance of parental involvement in the lives of their student but also recognizes the rights of students to share personal and private information at a time and place of their choosing.”).

³⁴² *Supra* note 191.

³⁴³ *See supra* note 193.

³⁴⁴ *Supra* note 192.



the age of 12 and those who are 12 years old and older that reflects no such distinction in FERPA or with respect to parents’ constitutional right to direct the education and upbringing of their *minor* children (*i.e.*, children who are under the age of 18 or over the age of 18 if a dependent for tax purposes). Whether a child is under 12 or between 12 and 17 years old has no bearing on the records to which the child’s parents have access pursuant to FERPA; until the child turns 18 and is no longer a dependent for tax purposes, schools must comply with any request by that child’s parents to access his or her education records. If FCPS schools are interpreting school-district policy according to the broad scope of its terms—to require staff not to share with parents records that reveal the “gender transitioning” process of a child between 12 and 17 years old (or beyond if a dependent), even upon the parents’ request—then FCPS is in violation of FERPA.

In addition to any active concealment of education records that is occurring in these school districts pursuant to their policies and guidance, whether independently of or in compliance with MSDE’s policies, it is undeniable that MSDE and the 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. Each identified policy that touches on this issue, including the FCPS policy with respect to children 12 years old and older, requires school staff to use the legal name and pronouns of a minor child who is “gender transitioning” in correspondence with the child’s parents, even if the child is addressed by a different name and different pronouns at school.³⁴⁵ As explicitly stated in the MSDE December 2024 Guidelines,³⁴⁶ the policies effectively establish school staff as a “buffer” between minor students and their parents concerning information about children’s “gender transitioning” process if they might not be “accepting” of the child’s choice to transition and might counsel them to discontinue it or not pursue it.

These school districts have thus established a system of obfuscation where employees may work behind closed doors with minor students³⁴⁷ 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.

³⁴⁵ *Supra* notes 67 (MSDE policy requiring consultation with student on which name and pronouns should be used in communications with parents), 135 (MCPS), 158 (PGCPS), & 190 (FCPS policy requiring staff not to disclose a student’s “transgender or gender diverse” status in communications with parents).

³⁴⁶ *Supra* note 87.

³⁴⁷ 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.



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.³⁴⁸ The policies of MSDE and the local school districts all contemplate that school staff will consult with a student—but not necessarily his or her parents—to determine, among other things, the name and pronouns by which staff and other students will address the student at school and the intimate facilities that the student will use. Naturally, these policies effectively require the sharing of information about the child’s “gender identity” with school staff (and other students, if required as part of the child’s “gender transitioning” process) to ensure that the child’s wishes are respected across the school. But this release of educational records and the information contained therein *without the consent of the minor child’s parents* is impermissible under FERPA. If the school districts wish to share such personal information about a minor student across the school, then they must obtain permission from the child’s parents.

To justify their apparent dissemination of this personal information, MSDE and 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.³⁴⁹ 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 individual at the time of FERPA’s adoption in 1974,³⁵⁰ it is a concept that—as defined in the policies at issue³⁵¹ and elsewhere—is wholly internal to each student and is thus much more akin

³⁴⁸ *Supra* note 225 and accompanying text.

³⁴⁹ *Supra* note 225.

³⁵⁰ *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.”).

³⁵¹ *See, e.g.,* OCT. 2024 GUIDANCE, *supra* note 56, at 4 (defining “gender identity” as “[a] person’s deep internal sense of being female, male, or another identity”); FCPS POLICY 443,



to that student’s political affiliations, sexual behaviors and attitudes, and religious practices or beliefs³⁵² 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 before sharing the student’s information with other staff—and, beyond doubt, other students.

MSDE’s Grievance Process Violates the Department’s Title IX Implementing Regulations

In fall 2024, MSDE responded promptly to implement the Department’s Title IX rule, effective in August of that year, rescinding many of the 2020 Rule’s due-process and free-speech protections for parties to Title IX sexual-harassment grievance processes in federally funded education programs and activities. As of the filing of this complaint, however, MSDE has failed to respond with similar alacrity to preliminary injunctions against the entirety of the 2024 Rule in courts across the country,³⁵³ the Supreme Court’s approval of these preliminary injunctions,³⁵⁴ the vacatur of the full rule by two federal district courts,³⁵⁵ and the announcement by OCR in February 2025 that it “will enforce Title IX under the provisions of the 2020 Title IX Rule, rather than the 2024 Title IX Rule.”³⁵⁶

Instead, MSDE policy setting out the state education agency’s Title IX sexual-harassment grievance process continues to reflect the now-defunct regulatory provisions imposed by the 2024 Rule. As revealed *supra*,³⁵⁷ these provisions harm parties to such a grievance process by, among other deficiencies, allowing schools to use the fundamentally flawed “single-investigator model” where the decisionmaker in a Title IX proceeding can be the same person who accepted the initial complaint or the investigator of the allegations; curtailing the right of parties to speak freely about the sexual-harassment allegations; permitting schools to investigate and ultimately resolve sexual-harassment allegations under Title IX even where such allegations, even if proved, would not constitute sex discrimination under Title IX; eliminating the ability of parties to present evidence from expert witnesses; restricting the ability of parties to access the evidence directly relating to the sexual-harassment allegations; depriving parties of the ability to pose questions to other parties or witnesses through an advisor or decisionmaker; undermining the autonomy of complainants by allowing schools to investigate Title IX sexual harassment in the absence of a formal complaint

supra note 179, at 2 (defining “Gender Identity” as “a person’s deeply held sense or psychological knowledge of [his or her] own gender, which can include being female, male, another gender, or no gender”).

³⁵² See 20 U.S.C. § 1232h.

³⁵³ *Supra* note 244.

³⁵⁴ *Supra* note 245.

³⁵⁵ *Supra* notes 246–48.

³⁵⁶ *Supra* note 257.

³⁵⁷ *Supra* notes 48–55.



signed by the complainant or the Title IX Coordinator; and defining “sexual harassment” to encompass speech and behavior that goes far beyond the bounds of the 2020 Rule’s limited standard, which corresponds with Supreme Court precedent.

By retaining these grievance-process provisions imposed by the 2024 Rule approximately one year after two courts vacated that rule in full, MSDE is willfully ignoring the consequences of these court decisions and is thumbing its nose at OCR’s February 2025 announcement that federal-funding recipients must abide by the provisions of the 2020 Rule or face enforcement actions. There is one set of Education Department regulations implementing Title IX that are applicable throughout the country, and as a recipient of federal funding bound by that law, MSDE has no authority to disregard those currently applicable regulations and “wait out” OCR enforcement efforts until, perhaps, a new administration takes office and decides to implement the 2024 Rule or some other set of rules.

We respectfully ask that OCR require MSDE to overhaul its current policy setting out the Title IX sexual-harassment grievance process so that it reflects the provisions of the 2020 Rule or face the withdrawal of federal funding for its programs or activities or other sanctions that OCR deems appropriate.

Maryland Law and Regulation Are No Obstacle to Title IX or FERPA Compliance

MSDE, MCPS, PGCPs, and FCPS cannot rely on any Maryland law or even State Board regulation to justify their failure to abide by the requirements of Title IX and FERPA.

As discussed at the outset of this complaint, Maryland law prohibits discrimination on the basis of characteristics including “gender identity” and prohibits “withhold[ing] privileges” from individuals “because of” such characteristics.³⁵⁸ State Board regulations also prohibit such discriminatory treatment on the basis of (or “because of”) “gender identity.”³⁵⁹ But such prohibition of discriminatory treatment means just that: schools and their employees cannot treat students differently based on their asserted “gender identity.” It does not mean that schools cannot separate teams or intimate spaces based on sex—such separation does not discriminate based on “gender identity” because it classifies only based on biology. It certainly does not mean that MSDE and school districts must set up “gender identity” as a “super-category” that trumps sex by, for instance, allowing students to access whichever sex-separated sports team, locker room, or hotel bedroom they desire based on their asserted “gender identity” (a privilege not afforded to anyone based on sex or any other category). It does not mean schools must disadvantage female athletes by forcing them to compete against boys and men or requiring any student to share a sex-separated intimate facility or bedroom with someone of the opposite sex or use a single-user facility. This

³⁵⁸ *Supra* note 31.

³⁵⁹ *Supra* note 32.



incorrect interpretation of the Maryland law, as reflected in the policies of MSDE and the local education agencies, violates Title IX.

Nothing prevents MSDE or the school districts from reading the law and regulations more narrowly to prohibit discriminatory treatment based on “gender identity” classifications. MSDE and the districts are free to adopt that interpretation, and we respectfully ask OCR to require that they do so or face a withdrawal of federal funding or other sanctions.

The State Board’s regulations regarding educational-records access reinforce those of FERPA, requiring schools to comply with parental requests for school records directly related to the student and requiring written consent prior to the disclosure of such records.³⁶⁰ Of course, Maryland law cannot override the federal requirements of Title IX or FERPA,³⁶¹ but in this case, no such conflict exists.³⁶²

Conclusion

The “gender identity” policies of MSDE and the local school districts identified in this complaint contravene federal law in numerous ways. They harm women and girls by requiring that they compete against men and boys in school sports. They undermine the safety and privacy of students by requiring that they share sex-separated intimate facilities and bedrooms with individuals of the opposite sex. They violate parental rights and endanger minor students by prohibiting school staff members from informing families who may not subscribe to gender ideology about such children’s decision to change the name and pronouns by which staff refer to them and the intimate facilities that they access. And MSDE has failed to adopt measures upholding due process and free speech in its grievance process as required by the Department in its regulations implementing Title IX.

Each of these harmful policies represents an affront to Title IX; taken together, they amount to an across-the-board repudiation of the meaning, purpose, structure, and history of that venerable law

³⁶⁰ See *supra* notes 25, 27.

³⁶¹ See U.S. CONST. art. VI, cl. 2.

³⁶² Any law or state or local education-agency policy also cannot override the constitutional guarantee of the parental right to direct the upbringing and education of one’s minor children, which MSDE and the local education agencies 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 MSDE and 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.



that mimics an antebellum defiance. We respectfully ask that OCR and SPPO require MSDE, MCPS, PGCPS, and FCPS to confront and correct the shortcomings identified in this complaint or face a withdrawal of federal funding or such other consequences that OCR and SPPO deem appropriate.

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

Sincerely,

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