November 17, 2026

Via Email to OCR@ed.gov
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: Title IX Violations by Austin Independent School District, Texas

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.

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 Austin Independent School District ("Austin ISD") in Texas 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]

We ask OCR to investigate the facts described below, consider potential sanctions against Austin ISD as authorized under Title IX, and place the school district on

[1] 20 U.S.C. §§ 1681 *et seq*.

clear notice that failure to comply with federal law will result in the termination of federal funding.

Facts

Austin ISD, the eighth-largest school district in Texas, enrolls approximately 69,251 students.[2] The district states on its website that it consists of 114 schools; this total includes 69 elementary schools, 14 middle schools, 12 high schools, 2 preK-12 schools, an alternative learning center, academies for young men and women leaders, a career development center, an early childhood center, and the Liberal Arts and Science Academy.[3] According to Austin ISD, the school district received roughly $247 million dollars in COVID-19 pandemic relief.[4] Austin ISD is a recipient of federal funding and is thus bound by Title IX's prohibition against discrimination on the basis of sex.[5]

The Texas governor signed into law Texas Senate Bill 8, the "Texas Women's Privacy Act" ("SB 8"), in September 2025; the law went into effect on December 4, 2025.[6] That law requires state agencies and political subdivisions of the state, including school districts, to "designate each multiple-occupancy private space" in their buildings, such as a restroom, locker room, or changing room, "for use only

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[2] *About Us*, AUSTIN IND. SCH. DIST., https://www.austinisd.org/about-us (last visited Nov. 9, 2026).
[3] *Id.*; *About Our Schools*, AUSTIN IND. SCH. DIST., https://www.austinisd.org/schools (last visited Nov. 9, 2026).
[4] MONTHLY ARCHIVE, JUNE 2021, AUSTIN IND. SCH. DIST., https://www.austinisd.org/archive/202106?page=10.
[5] *See 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 Nov. 5, 2026) ("All public school districts are covered by Title IX because they receive some federal financial assistance and operate education programs.").
[6] *Actions for 89(2) SB 8 by Middleton*, TEX. LEGISLATURE, https://capitol.texas.gov/BillLookup/Actions.aspx?LegSess=892&Bill=SB8 (last visited Nov. 10, 2026).

by individuals of one sex."[7] It also requires such entities to "take every reasonable step to ensure an individual whose sex is opposite to the sex designated for a multiple-occupancy private space . . . does not enter the private space."[8]

SB 8 states that, if a Texas resident provides written notice to a state agency or political subdivision that it is in violation of the law and the entity does not stop the violation within three business days, the resident may file a complaint with the Texas attorney general,[9] who may investigate the agency or subdivision and bring an action to collect civil penalties for violations[10] or to obtain equitable relief.[11] SB 8 requires that the complaint to the attorney general include an affidavit or sworn statement identifying the violation and confirming that notice had been provided to the entity at issue.[12]

Austin ISD's Policy FFH, adopted in April 2023 and entitled "Student Welfare: Freedom from Discrimination, Harassment, and Retaliation," prohibits discrimination and harassment on the basis of, among other identified characteristics, "gender identity." [13] It includes as an example of prohibited

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[7] TEX. GOV'T CODE ANN. § 3002.051(a).
[8] *Id.* § 3002.051(b).
[9] *Id.* § 3002.102(a).
[10] *Id.* § 3002.104(a).
[11] *Id.* § 3002.104(b).
[12] *Id.* § 3002.102(b).
[13] AUSTIN IND. SCH. DIST., FFH—STUDENT WELFARE: FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION: LOCAL POLICY [hereinafter "POLICY FFH"], https://pol.tasb.org/PolicyOnline/PolicyDetails?key=1146&code=FFH#localTabContent (last visited Nov. 10, 2026). As of the filing of this complaint, Austin ISD states that the current policy was adopted on April 2023 but "issued" (presumably meaning that it was amended) on June 3, 2026. *Id.* The language quoted in this complaint is the same as that contained in the policy as of August 2025. *See* AUSTIN IND. SCH. DIST., FFH—STUDENT WELFARE: FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION, https://web.archive.org/web/20250805085025/https://pol.tasb.org/PolicyOnline/Poli

harassment "unwanted, offensive, or harmful comments on personal appearance, personal behavior, or a person's body . . . ." [14] It notes that "gender-based harassment" includes "physical, verbal, or nonverbal conduct based on the student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of masculinity or femininity."[15] Austin ISD administers Policy FFH through a regulation that echoes the relevant language of the policy quoted *supra*.[16]

On February 17, 2026, a parent of a student enrolled at Austin High School, which is in the Austin ISD school system, filed a complaint with the Texas Office of the Attorney General ("Texas AG") asserting that a biologically male student repeatedly used the female restroom for a month-long period.[17] The complaint explained that, on January 15, 2026, the parent had notified the high school that the parent's daughter had witnessed the male student using the girls' restroom, in violation of SB 8.[18] The school did not address the issue, leading the parent to notify the school

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cyDetails?key=1146&code=FFH#localTabContent (version of the policy archived by the Way Back Machine on August 5, 2025).

[14] POLICY FFH, *supra* note 13.

[15] *Id.*

[16] AUSTIN IND. SCH. DIST., FFH—STUDENT WELFARE: FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION: REGULATION, https://pol.tasb.org/PolicyOnline/PolicyDetails?key=1146&code=FFH#regulationsTabContent (last visited Nov. 10, 2026).

[17] Letter from Parent in Austin ISD to Office of the Attorney General 1 (Feb. 17, 2026) [hereinafter "Feb. 17 Complaint"], *available at* https://txvalues.org/wp-content/uploads/2026/02/Formal-Complaint-for-Privacy-Act-Violation-Austin-ISD-1.pdf. According to a press release issued by the nonprofit organization Texas Values, which assisted the parent in preparing and submitting the February 17 complaint, the biological male used multiple restrooms *and* locker rooms in the school. Press Release, Texas Values, Update! Still No Response from Austin ISD on Boy in Girls' Restroom, Texas Values Hopes Investigation Continues (May 27, 2026), https://txvalues.org/update-still-no-response-from-austin-isd-on-boy-in-girls-restroom-texas-values-hopes-investigation-continues/.

[18] Feb. 17 Complaint, *supra* note 17, at 1.

a second time, on February 3, that the student continued to observe the male student using the girls' restroom. On February 10, the parent submitted an email to school staff describing their obligations to maintain sex-separated restrooms under SB 8.[19] According to the parent's February 17 complaint, the school did not respond and did not stop the male student from using the girls' restroom.[20] The February 17 complaint included the sworn affidavit required by SB 8 describing the violations and affirming that notice had been provided to Austin ISD.[21]

On March 6, the Texas AG announced that it had responded to the parent's February 17 complaint by launching an investigation of Austin ISD and warning the school district that, pursuant to SB 8, "there will be a $5,000 penalty per day going forward if the violation continues and boys are allowed to continue to put female students at risk by invading their spaces."[22] According to a statement by the Attorney General of Texas, "Austin ISD has intentionally chosen to [permit biological males to access girls' restrooms and locker rooms] in violation of S.B. 8."[23]

On April 24, the Texas AG notified Austin ISD that it had received a new complaint asserting that, in early April, the biologically male student who was the subject of the February 17 complaint had entered and used a girls' restroom at the school district's AISD Performing Arts Center during a University Interscholastic League competition.[24] According to the April 24 letter, Austin ISD had responded to the

[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Press Release, Texas AG, Attorney General Ken Paxton Investigates Austin ISD for Repeatedly Letting Men in Women's Restrooms and Locker Rooms (Mar. 6, 2026), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-investigates-austin-isd-repeatedly-letting-men-womens-restrooms-and.
[23] *Id.*
[24] Letter from Steven Ogle, Ass't Att'y Gen., Administrative Law Div., Tex. Off. of the Att'y Gen., to Dominique L. Augustus, Associate Gen. Counsel, Off. of the Gen. Counsel, Austin Ind. Sch. Dist. 1 (Apr. 24, 2026), *available at*

investigation launched in March by claiming that it was in compliance with SB 8 but had not provided the requested policies.[25] In light of the new complaint, the Office of the Attorney General requested copies of the policies it had sought in March, complaints received by Austin ISD or Austin High School alleging violations of SB 8 and actions taken in response, information related to how the school district was handling the February and April complaints, and "documentation of what efforts [Austin ISD] is taking to ensure these violations cease to continue."[26]

According to Texas Values, the nonprofit organization representing the Austin High School parent who filed the February 17 state complaint, there was no indication as of early August 2026 that Austin ISD had provided the materials requested in the Texas AG's April letter.[27] As of the filing of this complaint, DFI can find no publicly available evidence that Austin ISD has agreed to resolve the matter and ensure that it will separate its intimate facilities on the basis of sex as required by SB 8 and, as explained *infra*, Title IX.

Federal Law and Recent Developments Under Title IX

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.[28] The law includes a rule of construction specifying that "nothing contained herein shall be construed

https://www.texasattorneygeneral.gov/sites/default/files/images/press/Letter%20(2).pdf.

[25] *Id.*

[26] *Id.*

[27] Press Release, Texas Values, Update! Texas Values Will Continue to Fight to Hold Austin ISD Accountable for Allowing Male in Female Restroom (Aug. 3, 2026), https://txvalues.org/update-texas-values-will-continue-to-fight-to-hold-austin-isd-accountable-for-allowing-male-in-female-restroom/.

[28] 20 U.S.C. § 1681(a).

to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes."[29]

Since the Department's predecessor first issued regulations in 1975 pursuant to these directives,[30] 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."[31]

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.[32] 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."[33] 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 curiam* opinion of the U.S. Supreme Court confirmed this understanding of Title IX

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[29] 20 U.S.C. § 1686.

[30] *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).

[31] 34 C.F.R. § 106.33.

[32] *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.")).

[33] *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

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."[34]

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.[35] Those amendments misinterpreted the law's prohibition of "discrimination on the basis of sex" to prevent discrimination on the basis of an undefined "gender identity" in federally funded education programs and activities.[36] As a result, the 2024 Rule required recipients to prohibit discrimination on the basis of "gender identity" in all of their programs and activities and to allow any person to use whichever sex-separated bathroom or locker room corresponded with that person's claimed "gender identity."[37]

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,

[34] *Dep't of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024).
[35] 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").
[36] *Id.* at 33,886 (codified at 34 C.F.R. § 106.10).
[37] *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").

and other sex-separated private facilities with women and girls.[38] On August 16, 2024, the Supreme Court unanimously agreed that a preliminary injunction blocking the 2024 Rule's "gender identity" provisions and other central provisions of the regulations was an appropriate measure.[39]

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"[40] 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.[41] 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."[42]

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[38] *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).

[39] *Louisiana*, 603 U.S. at 867.

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

[41] *Id.* at 626.

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

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").[43] In that EO, the president declared that "[i]t is the policy of the United States to recognize two sexes, male and female,"[44] 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."[45] 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 . . . ."[46] 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."[47]

In Executive Order 14201 dated February 5, 2025, *Keeping Men Out of Women's Sports* ("EO 14201"),[48] President Trump directed the Secretary of Education to comply with the judicial vacatur of the 2024 Rule "and take other appropriate action to ensure this regulation does not have effect," "take all appropriate action to affirmatively protect all-female athletic opportunities and all-female locker rooms" in line with Title IX, and "prioritize Title IX enforcement actions against educational institutions (including athletic associations composed of or governed by such institutions) that deny female students an equal opportunity to participate in sports and athletic events by requiring them, in the women's category, to compete with or against or to appear unclothed before males."[49] EO 14201 further

[43] Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).
[44] *Id.* at 8615.
[45] *Id.*
[46] *Id.* at 8616.
[47] *Id.* at 8617.
[48] Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 11, 2025).
[49] *Id.* at 9279.

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."[50]

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."[51] 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 . . . ."[52]

On September 29, 2026, the Department published a final rule formally repealing the 2024 Title IX regulations promulgated by the Biden administration and restoring the regulatory text that existed before the 2024 rulemaking in light of the federal district court vacaturs of the regulations in *Tennessee v. Cardona* and *Carroll Independent School District v. U.S. Department of Education*.[53]

Although the 2024 regulations had been unenforceable nationwide since January 2025, and the Department had already resumed enforcement of the preexisting Title IX regulations, the vacated regulatory provisions had remained published in the Code of Federal Regulations. The September 2026 final rule formally removed those provisions and restored the pre-2024 regulatory framework, subject to limited technical modifications, to ensure that the published regulations accurately reflect the governing legal requirements.[54]

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[50] *Id.* at 9280.
[51] Craig Trainor, Acting Ass't 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).
[52] *Id.* at 2.
[53] 91 Fed. Reg. 61308.
[54] *Id.*

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.'"[55] 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 . . . ."[56]

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."[57]

The Northern Virginia local education agencies declined to sign OCR's proposed resolution agreements by OCR's deadline of August 15, 2025.[58] In response, OCR

[55] 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.
[56] *Id.*
[57] *Id.*
[58] 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),

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.[59] 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.[60]

Finding of Noncompliance by Minnesota Department of Education

On September 30, 2025, the Department 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 had violated Title IX by allowing males to compete in

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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.

[59] *Id.*

[60] *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/. On October 15, 2026, a divided panel of the Fourth Circuit vacated the district court's decision and remanded the case, concluding that "[b]ecause the school districts have asserted some claims that are not at their essence contractual, the district court erred in dismissing these complaints in full for lack of jurisdiction." *See* Zach Schonfeld, *Appeals Court Revives Virginia School Boards' Suits Against Trump Administration over Transgender Policy Threats*, THE HILL (Oct. 15, 2026), https://thehill.com/homenews/education/6151056-transgender-student-policy-legal-battle/.

sports and use intimate facilities, such as locker rooms and bathrooms, designated for women and girls.[61]

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.[62]

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."[63] 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

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[61] 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.

[62] *Id.* at 2.

[63] *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).

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 intimate facilities on the basis of sex in violation of Title IX, policies granting males access to private spaces designated for females directly discriminates against females. The Joint Finding 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."[64] 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."[65]

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.[66] "[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.[67] 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.[68]

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

[64] *Id.*
[65] *Id.* at 49.
[66] *Id.* at 21.
[67] *Id.* at 54.
[68] *Id.*

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.[69] 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' sports and intimate spaces, it had referred their case to the U.S. Department of Justice for enforcement action.[70] On March 30, 2026, the Justice Department sued MDE and MSHSL over their Title IX violations.[71]

Analysis

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 condition 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, according to the February 17 complaint and the April complaint received by the Texas AG, Austin ISD has been requiring exactly that by allowing a biological male to access girls' intimate facilities.

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

[69] *Id.* at 61.
[70] 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.
[71] Press Release, U.S. Dep't of Justice, Off. of Pub. Affairs, Justice Department Sues Minnesota to Protect Girls' Sports and Intimate Spaces (Mar. 30, 2026), https://www.justice.gov/opa/pr/justice-department-sues-minnesota-protect-girls-sports-and-intimate-spaces.

a human being as a condition of accessing the benefits of that education program or activity.[72] 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 Austin ISD might characterize the "gender identities" individuals might experience, Title IX protects individuals from discrimination on the basis of sex, which has two binary categories—male or female. No additional categories of "gender identity" recognized can trump that binary, biologically based paradigm of federal law.

Thus, Title IX requires Austin ISD to recognize the dignity of boys and girls in maintaining their privacy. But Austin ISD's actions to date on this issue appear to confirm its failure to respect those interests protected by the law. The stark and revealing facts that the school district reportedly allowed a biological male to continue to access its restrooms and locker rooms in its buildings for over a month, at multiple locations, and that it has apparently not provided the information sought by the Texas attorney general in aid of his office's investigation into the district's compliance with state law, raises a serious concern that this is not a matter of mere incompetence by school officials, but rather a coordinated effort to implement the school district's Policy FFH, which prohibits discrimination on the

[72] *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).

basis of "gender identity," in a way that requires its female students to share intimate spaces designated for their sex with men and boys. There is no evidence that, since the complaints were filed, the school district has modified its approach to carrying out that policy.

Such an implementation of its policies to prioritize students who claim their "gender identity" is inconsistent with their biological sex over women and girls subverts the original meaning and purpose of Title IX. A recipient of federal financial assistance cannot demand that students disregard their biological sex and related privacy interest in sex-separated intimate facilities as the price of participation in the recipient's educational program or activity.

OCR has confirmed this 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. By allowing boys and men to access intimate spaces reserved for women and girls, those entities, like Austin ISD, violate Title IX and discriminate against students on the basis of sex. There are multiple ways in which one might characterize the practices of Austin ISD regarding intimate-facilities access as violative of Title IX—arbitrary line-drawing that robs the school district of sufficient justification to maintain separate intimate facilities for each sex and thus gives rise to prohibited sex discrimination,[73] 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,[74] 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 restrooms and locker rooms designated for their sex. No matter how one characterizes the harm caused by these practices, they directly contradict the law's nondiscrimination guarantee.

SB 8 applies to state and local agencies across Texas; Title IX applies to federally funded institutions across the United States. In accordance with its responsibility

[73] *Supra* note 63.
[74] *Supra* note 65.

to protect students in *every* state from the deprivation of their rights guaranteed pursuant to federal law, DFI respectfully asks OCR to wield its authority granted by Title IX to ensure that all students, no matter the composition of their government now or in the near future, are guaranteed the right to safety, privacy, and dignity to the extent of the law's protections.

Conclusion

Title IX prohibits discrimination on the basis of sex—not "gender identity"—in federally funded education programs and activities. According to the allegations of a parent's February 17 complaint and the Texas Office of the Attorney General's April 24 correspondence with the school district, Austin ISD is in violation of Title IX because, by forcing students to share intimate facilities with a member of the opposite sex as a condition of participation in its education programs and activities, it prioritizes "gender identity" over sex. Simply put, Austin ISD's implementation of its "gender identity" policies erase "sex" from Title IX. Accordingly, we urge OCR to investigate the allegations in this complaint and commence proceedings to terminate federal financial assistance in the event Austin ISD refuses to enter into a voluntary resolution agreement satisfactory to the Department.

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

Sincerely,

/s/ Paul F. Zimmerman
Paul F. Zimmerman
Senior Counsel, Policy & Regulatory