

March 18, 2025

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

**Re: Complaint Against the Illinois State Board of Education and Chicago Public Schools
Arising from “Gender Identity” Policies and Practices in Violation of Title IX**

To Whom It May Concern:

Pursuant to the discrimination complaint resolution procedures of the U.S. Department of Education’s (“Department”) Office for Civil Rights (“OCR”), we bring this federal civil rights complaint against the Illinois State Board of Education (“ISBE”) and Chicago Public Schools (“CPS”) 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

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, including by requiring students and employees to share intimate facilities with members of the opposite sex as a condition of participating in a school’s education programs or activities.

The Liberty Justice Center is a nonprofit public-interest law firm that brings lawsuits nationwide to defend constitutional rights and challenge government overreach, including acts of unlawful discrimination by government entities.

¹ 20 U.S.C. §§ 1681 *et seq.*



We request that OCR investigate the policies and actions described below, consider potential sanctions against ISBE and CPS as authorized under Title IX,² and place these entities on clear notice that failure to comply with federal law in their policies concerning access to intimate facilities in education programs and activities will result in the withdrawal of federal funding.

Facts

Illinois Public Schools and “Gender Identity” Law

Illinois public K–12 schools enrolled over 1.8 million students at the start of the 2023–24 school year, making it the fifth-largest state school system in the country.³ As of the 2020–21 school year, these schools received over \$3 billion in federal funds.⁴ Additionally, beginning in March 2020, Congress allocated nearly \$8 billion to the State of Illinois for the purpose of COVID-19 pandemic relief for public K–12 students.⁵ As a state education agency, ISBE is bound by Title IX’s prohibition against discrimination on the basis of sex.⁶

Illinois law prohibits “any person on the basis of unlawful discrimination to . . . [d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation,”⁷ which the law defines to include a “non-sectarian” elementary or secondary school.⁸ Such unlawful discrimination includes discrimination on the basis of “gender-related identity, whether or not traditionally associated with the person’s designated sex at birth.”⁹ ISBE implements this and related provisions of state law in its regulations by providing that “[n]o school

² See 20 U.S.C. § 1682 (authorizing federal departments and agencies empowered to extend federal financial assistance to education programs or activities to effect compliance with Title IX “by the termination of or refusal to grant or to continue [such] assistance” or “by any other means authorized by law”).

³ See National Center for Education Statistics, *Digest of Education Statistics*, https://nces.ed.gov/programs/digest/d24/tables/dt24_203.20.asp (last visited Mar. 10, 2025).

⁴ See National Center for Education Statistics, *Digest of Education Statistics*, https://nces.ed.gov/programs/digest/d23/tables/dt23_235.20.asp (last visited Mar. 10, 2025).

⁵ See Illinois State Board of Education, *Federal COVID-19 Pandemic Relief Funding Guide*, at p. 3, <https://www.isbe.net/Documents/ESSER-Fact-Sheet.pdf> (last visited Mar. 10, 2025).

⁶ See U.S. Dep’t of Educ., *Title IX and Sex Discrimination*, (Aug. 2021) <https://www.ed.gov/laws-and-policy/civil-rights-laws/sex-discrimination/Title-IX-and-Sex-Discrimination> (“Title IX applies to schools, local and state educational agencies, and other institutions that receive federal financial assistance from the [U.S.] Department [of Education].”).

⁷ 775 ILL. COMP. STAT. 5/5-102(A).

⁸ *Id.* 5/5-101(A)(11).

⁹ *Id.* 5/1-102(A), 5/1-103(O-1).



system may exclude or segregate any pupil, or discriminate against any pupil on the basis of his or her . . . gender identity”¹⁰

In its March 2020 guidance entitled “Supporting Transgender, Nonbinary and Gender Nonconforming Students,” ISBE interprets Illinois law to mean that “[s]tudents must be allowed to use the facilities,” including bathrooms, locker rooms, and showers,¹¹ “that correspond with their gender identity,”¹² which it defines as “[a] person’s internal, deeply held sense or psychological knowledge of their own gender that can include being female, male, another gender, nonbinary, gender nonconforming, or no gender, and is unrelated to the person’s sex assigned at birth.”¹³ The guidance asserts that “[g]ender identity is an innate part of a person’s identity, and the responsibility for determining an individual’s gender identity rests with the individual.”¹⁴ In other words, it is impossible for anyone other than the person who claims a certain “gender identity” to decide the merits of that determination.

According to the ISBE guidance, “access” to sex-separated facilities on the basis of an individual’s “gender identity” is not enough. Consistent with state law, “a school must provide students ‘full and equal’ use of all school facilities” and “cannot impose on transgender, nonbinary, and gender nonconforming students conditions on the use of facilities that are not required of other students.”¹⁵

Importantly, the ISBE guidance misinterprets the Equal Protection Clause of the U.S. Constitution and Title IX to require such access to intimate facilities by students on the basis of an asserted “gender identity” rather than sex at birth.¹⁶ Under both federal and state law, ISBE states, “the discomfort or privacy concerns of students, teachers, or parents are not valid reasons to deny or limit the equal use of facilities by transgender, nonbinary, and gender nonconforming students.”¹⁷ A school must respond to any student’s assertion of his or her privacy interest by advising the student that, rather than use the facility that is designated for his or her sex, he or she can use “a more private option.”¹⁸ The guidance warns school districts that “they will be subjected to significant monetary liability, including damages, attorneys’ fees, and costs,” for any violations of state law—or its incorrect interpretation of federal law.¹⁹

¹⁰ ILL. ADM. CODE tit. 23, § 1.240(b).

¹¹ See Illinois State Board of Education, *Supporting Transgender, Nonbinary and Gender Nonconforming Students*, at p. 11, (Mar. 1, 2021) <https://www.isbe.net/Documents/ISBE-Guidance-Supporting-Transgender-Nonbinary-Gender-Nonconforming-Students.pdf>.

¹² *Id.* at 10.

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 10.

¹⁶ *Id.*

¹⁷ *Id.* at 11.

¹⁸ *Id.* Other than acknowledging the narrow interest of schools in preventing behavior that violates their policies or is criminal in their intimate facilities, *id.*, the guidance does not mention any student safety interests, presumably because ISBE discounts their significance.

¹⁹ *Id.*



Regarding overnight school trips, the ISBE guidance follows the same pattern of requiring schools to be “vigilant in attending to the needs of transgender, non-binary and gender non-conforming students”²⁰ while totally discounting the interest of other students and their parents in privacy and completely ignoring any interest in safety. In short, according to the guidance, “[t]o deny a student the accommodations afforded to other students—consistent with their [his or her] identity—would be discrimination prohibited by Title IX and the IHRA.”²¹ Once again, “any *claimed* privacy concern of another student is not a reason to limit use by a transgender, nonbinary, or gender nonconforming student.”²² Thus, as with intimate facilities, “any student seeking more privacy may be provided that privacy.”²³ The guidance, however, warns that “confidentiality laws and requirements continue to apply to students in the context of overnight trips,” and “[a] trip is not a basis to disclose or require disclosure of a student’s transgender, nonbinary, or gender nonconforming identity.”²⁴ Moreover, the guidance contains a strict direction to school districts regarding confidentiality: **“Do not send notifications or permission slips to parents and/or students regarding a student’s transgender, nonbinary, or gender nonconforming identity.”**²⁵ Thus, the guidance questions the legitimacy of other students’ interests in privacy and mandates a regime of secrecy with regard to the student who may be forced to share a room with a person of the opposite sex (knowingly or unknowingly) and parents who may object to the arrangement. Such a regime prioritizes gender ideology over privacy and safety interests and, as discussed below, violates Title IX and the right of parents to raise and educate their children.

Also in March 2020, ISBE published a set of sample board policies and administrative procedures for Illinois school districts, including a sample district procedure providing that “[t]ransgender, nonbinary, and gender nonconforming students shall be allowed use of restrooms, locker rooms, changing facilities, and all other facilities that correspond with their gender identity in the same manner that cisgender students are allowed use.”²⁶ According to the sample procedures, “[s]chools *shall* make the requested restrooms, locker rooms, and changing facilities available *immediately* upon consultation with the student.”²⁷ Any student who desires increased privacy—for instance, in order to avoid being forced to share a restroom or locker room with a member of the opposite sex—“should be provided with a reasonable alternative arrangement” such as using “a nearby all-gender or secure-access restroom”²⁸

²⁰ *Id.* at 14.

²¹ *Id.*

²² *Id.* (emphasis added).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 15 (emphasis added).

²⁶ Illinois State Board of Education, *Supporting Transgender, Nonbinary and Gender Nonconforming Students*, at p. 9, (Mar. 9, 2020) <https://www.isbe.net/Documents/District-Policy-Admin-Proc.pdf#search=%22gender%20identity%22>.

²⁷ *Id.* (emphases added).

²⁸ *Id.*



The sample procedures also provide that “[s]tudents shall be permitted to participate in overnight [school] trips in accordance with their gender identity; with other students who share their gender identity; or in a manner that makes them feel safe, affirmed, and included.”²⁹ According to the procedures, “[o]vernight accommodations shall be arranged and provided in a manner that respects the student’s desired level of confidentiality,” eschewing any regard for the interests of the other students on the trip.³⁰ In a shocking affront to parental rights, the sample procedures actually *require* schools to make these arrangements in secret, without parental notification, approval, or opportunity to opt out: “[s]chools *shall not* notify chaperones or parents of other students about the housing arrangements for a transgender, nonbinary, or gender nonconforming student.”³¹

CPS Policies on Access to Sex-Separated Facilities

With an enrollment of approximately 325,000 students,³² CPS is the largest school district in Illinois and the fourth-largest school district in the United States.³³ As a local education agency receiving federal funding, CPS is bound by Title IX’s prohibition against discrimination on the basis of sex.³⁴

On July 25, 2024, the Chicago Board of Education adopted an interim “Comprehensive Non-Discrimination, Harassment, and Retaliation Policy” for the stated purpose of complying with the Department’s 2024 Title IX Rule (discussed below) prior to its effective date of August 1, 2024.³⁵ The interim policy prohibits discrimination on the basis of any “protected category,” including

²⁹ *Id.* at 10.

³⁰ *Id.*

³¹ *Id.* (emphasis added).

³² Chicago Public Schools, *Stats and Facts*, <https://www.cps.edu/about/stats-facts/> (last visited Mar. 10, 2025).

³³ See Chalkbeat Chicago, *Chicago Public Schools on track to see slight enrollment increase in the 2024-25 school year*, (Sept. 27, 2024)

<https://www.chalkbeat.org/chicago/2024/09/27/enrollment-on-the-rise/>.

³⁴ 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); U.S. Dep’t of Educ., *Frequently Asked Questions: Sex Discrimination*, <https://www.ed.gov/laws-and-policy/civil-rights-laws/frequently-asked-questions-sex-discrimination> (last visited Mar. 10, 2025) (“All public school districts are covered by Title IX because they receive some federal financial assistance and operate education programs.”).

³⁵ Chicago Public Schools, *Interim Comprehensive Non-Discrimination Harassment, Sexual Harassment, Sexual Misconduct and Retaliation*, (July 25, 2025) <https://www.cps.edu/sites/cps-policy-rules/policies/100/102/102-8a/>.



“gender identity.”³⁶ The interim policy states that “Covered Individuals,” including employees, students, volunteers, and visitors, “must not be subjected to any Discrimination, Harassment, or Retaliation by another Covered Individual while employed by, working for, or attending or participating in District programs or activities.”³⁷ Any employees who violate the interim policy “are subject to disciplinary action up to and including termination,” and students who violate the policy “are subject to disciplinary action under the Student Code of Conduct,”³⁸ which provides that “persistent severe discrimination [or] bias-based behavior” is subject to discipline up to and including out-of-school suspensions.³⁹

Also in July 2024, CPS issued a set of interim guidelines on “Gender & Sexuality Protections for CPS Students.”⁴⁰ The guidelines incorrectly assert that Title IX “specifically protects all individuals from discrimination and harassment on the basis of their . . . gender identity”⁴¹ These “guidelines” require schools to provide separate bathrooms for adults and students and to designate these bathrooms as follows: “Girls+,” “Boys+,” “Student Gender-Neutral,” “Men+,” “Women+,” and “Staff Gender Neutral.”⁴² According to the guidelines, “[i]t is a violation of the Comprehensive Non-Discrimination Policy to deny a person access to a facility that corresponds to their [his or her] identity, or to require a court-order [*sic*] name change or other documentation as a condition to use a specific facility.”⁴³ Consequently, “[a]ll individuals are allowed to use role-appropriate (e.g [*sic*] student or adult) restrooms and locker rooms that correspond with their gender identity.”⁴⁴ Consistent with ISBE’s sample policies, CPS’s interim guidelines direct

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Chicago Public Schools, *Student Behaviors Covered by the SCC*, at pp. 28–29, <https://www.cps.edu/globalassets/cps-pages/about-cps/policies/student-code-of-conduct/section-3-scc-2024-student-behaviors-covered-by-the-scc.pdf> (last visited Mar. 10, 2025). CPS defines “Bias-based Behavior” as “any physical, verbal, nonverbal, or other act or conduct . . . directed toward a member or perceived member of a protected category within the school community that is of a discriminatory or harmful nature.” Chicago Public Schools, *Interim Comprehensive Non-Discrimination Harassment, Sexual Harassment, Sexual Misconduct and Retaliation*, (July 25, 2025) <https://www.cps.edu/sites/cps-policy-rules/policies/100/102/102-8a/>.

⁴⁰ Chicago Public Schools, *Interim Guidelines: Gender & Sexuality Protections for CPS Students*, https://www.cps.edu/globalassets/cps-pages/services-and-supports/health-and-wellness/healthy-cps/healthy-environment/lgbtq-supportive-environments/interim-guidelines_-_gsp-for-cps-students-july-2024.pdf (last visited Mar. 10, 2025).

⁴¹ *Id.* at 2.

⁴² *Id.* at 6.

⁴³ *Id.*

⁴⁴ *Id.* at 7.



schools to offer students who do not wish to share their designated bathroom with a member of the opposite sex “reasonable alternative arrangements,” including use of a single-stall restroom.⁴⁵

For overnight trips, the interim guidelines provide that “[a]ccommodations must be provided for students of all gender identities and those questioning their gender identity, regardless of whether they consistently assert their gender identity at school.”⁴⁶ CPS advises that “these accommodations should be tailored on a case-by-case basis” and be based on collaboration with the “student”—presumably the “transgender” or “nonconforming” student—regarding what accommodations are necessary.⁴⁷ The guidelines require schools to inform students “about their accommodations for the trip before departure” and states that “[a]ll arrangements should be . . . maintained in strict confidentiality to respect their privacy.”⁴⁸ Like the ISBE guidance, this provision appears to be aimed at preventing parents from knowing the sex of individuals with whom their child shares lodging.

Tellingly, CPS’s Office of Health & Wellness has published a best practices resource on “how to respond to pushback regarding supporting Transgender, Non-Binary & Gender Nonconforming [*sic*] Students.”⁴⁹ In response to hypothetical pushback pointing out that granting a biological male who identifies as female access to a girls’ bathroom may make the girls who use that bathroom feel uncomfortable or may abridge their safety or violate their privacy rights, the guidance advises the following general response:

The person who is trans is also a girl and has the right to use the bathroom that aligns with their [*sic*] gender identity according to the CPS Guidelines regarding the support of TGNC Students. If someone is uncomfortable with using a shared bathroom with other students in the school, [he or she has] the right to access a single stall bathroom if that would make [him or her] more comfortable. The onus should not be on the transgender student to use a different bathroom to make cisgender students more comfortable [*sic*].⁵⁰

⁴⁵ *Id.*; see also Chicago Public Schools, *Supporting Gender Diversity Toolkit*, p. 19 n.6, <https://docs.google.com/document/d/1sz2SD1MEts05MyMykwPADWuxGAC1NBftdCSOIEQomtc/edit?usp=sharing> (last visited Mar. 10, 2025) (“In an event where a cisgender student is uncomfortable in the presence of a transgender or gender non-conforming student in a particular restroom, the cisgender student can be given the option to use a single-stall restroom.”).

⁴⁶ Chicago Public Schools, *Interim Guidelines: Gender & Sexuality Protections for CPS Students*, p. 7, https://www.cps.edu/globalassets/cps-pages/services-and-supports/health-and-wellness/healthy-cps/healthy-environment/lgbtq-supportive-environments/interim-guidelines_-_gsp-for-cps-students-july-2024.pdf (last visited Mar. 10, 2025).

⁴⁷ *Id.* at 7–8.

⁴⁸ *Id.* at 8.

⁴⁹ Healthy CPS, *Guidance for Responding to Common Pushback*, p. 1, <https://www.cps.edu/globalassets/cps-pages/services-and-supports/health-and-wellness/healthy-cps/healthy-environment/lgbtq-supportive-environments/guidance-for-responding-to-common-pushback-english.pdf> (last visited Mar. 10, 2025).

⁵⁰ *Id.*



The guidance moves on to another (understandable) objection to bathroom access on the basis of “gender identity”: “What if someone just says they’re a girl just to get into the girls’ bathroom?” In response, the guidance imagines that this simply does not occur, declaring unequivocally that “[t]his is not something that happens. We trust that our students and staff members are using the facilities to tend to their needs.”⁵¹ The guidance states that a student may report any “issue that arises in the bathroom” to the Office of Student Protections, but it does not indicate how that office is capable of redressing any privacy violations that may occur as a result of CPS’s policy that no boy has ever used a pretext to sneak into the girls’ bathroom.⁵²

Disturbingly, the Office of Student Health & Wellness’s guidance also recommends hiding information from parents about the sex of individuals with whom their children are sharing intimate facilities. The guidance characterizes as “pushback” the following question: “Should I tell parents about a trans girl using the girls bathroom or locker room?”⁵³ The answer, according to the guidance, is no: “[W]e do not disclose information about a student without a student’s consent, especially to someone who is not [his or her] caregiver.”⁵⁴

The Rise and Fall of the 2024 Title IX Rule

On April 29, 2024, the Department finalized Title IX implementing regulations (“2024 Rule”) that prohibited “gender identity” discrimination in federally funded education programs and activities across the country. The agency unlawfully extended the meaning of “discrimination on the basis

⁵¹ *Id.* at 2; see also Supporting Gender Diversity Toolkit, *Resources & Tools to Support the CPS Guidelines Regarding the Support of Transgender and Gender Nonconforming Students*, at p. 26, <https://www.cps.edu/globalassets/cps-pages/services-and-supports/health-and-wellness/healthy-cps/healthy-environment/lgbtq-supportive-environments/supportinggenderdiversitytoolkit2.pdf> (last visited Mar. 10, 2025) (“The regulations of the CPS Guidelines of treating transgender and gender nonconforming students does not allow for a student of the opposite sex to enter into the wrong facility. A transgender student is very different from a young person who is claiming to be a different gender for an inappropriate purpose. School staff will reprehend any student who is [*sic*] enters the wrong facility as a result of inappropriate behavior.”).

⁵² For a recent example of a potentially life-threatening situation, see DFI’s complaint against Arlington Public Schools regarding a sex offender who repeatedly exposed himself to women and girls in a girls’ locker room and continued to gain admittance to the facility because he claimed that his “gender identity” was female. Defense of Freedom Institute, *Complaint Concerning Arlington Public Schools’ Violation of Title IX by Failing to Address Sexual Misconduct in a Girls’ Locker Room*, (Feb. 5, 2025) <https://dfipolicy.org/wp-content/uploads/2025/02/DFI-Complaint-APS-02.05.2025-1.pdf>.

⁵³ Healthy CPS, *Guidance for Responding to Common Pushback*, p. 2, <https://www.cps.edu/globalassets/cps-pages/services-and-supports/health-and-wellness/healthy-cps/healthy-environment/lgbtq-supportive-environments/guidance-for-responding-to-common-pushback-english.pdf> (last visited Mar. 10, 2025).

⁵⁴ *Id.*



of sex” in Title IX to include discrimination on the basis of an undefined “gender identity.” As a result, the 2024 Rule required public schools to allow any person to use whichever sex-separated bathroom or locker room corresponded with that person’s claimed “gender identity.”⁵⁵

A slew of federal district courts and courts of appeals across the country blocked the 2024 Rule on the basis that it did not accord with the meaning of Title IX and subverted the original intent of the law—to guarantee equal opportunities to women and girls in education—by requiring schools to permit males who identify as female to share bathrooms, locker rooms, and other sex-separated private facilities with women and girls.⁵⁶ On August 16, 2024, a unanimous Supreme Court agreed that a preliminary injunction blocking the “gender identity” provisions of the 2024 Rule was an appropriate measure.⁵⁷

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”⁵⁸ 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.⁵⁹ 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.”⁶⁰

⁵⁵ *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474, 33,887 (Apr. 29, 2024) (hereinafter “2024 Rule”); *id.* at 33,818 (denying “a transgender student access to a sex-separate facility or activity consistent with that student’s gender identity . . . would violate Title IX’s general nondiscrimination mandate”).

⁵⁶ 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).

⁵⁷ *Dep’t of Educ. v. Louisiana*, No. 24A78, slip op. at *2 (U.S. Aug. 16, 2024).

⁵⁸ *Tennessee v. Cardona*, No. 2:24-cv-00072-DCR-CJS, at **4–7 (E.D. Ky. Jan. 9, 2025).

⁵⁹ *Id.* at 7–8.

⁶⁰ *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, No. 4:24-cv-00461-O, at **5, **8 (N.D. Tex. Feb. 19, 2025).



Trump Administration’s Return to Enforcing Original Meaning 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”).⁶¹ In that EO, the president declared that “[i]t is the policy of the United States to recognize two sexes, male and female,”⁶² 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.”⁶³ 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”⁶⁴ 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.”⁶⁵

In Executive Order 14201 dated February 5, 2025, *Keeping Men Out of Women’s Sports* (“EO 14201”),⁶⁶ 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.”⁶⁷ 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.”⁶⁸

In light of the vacatur of the 2024 Rule, and consistent with EO 14168 and EO 14201, the 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.”⁶⁹

⁶¹ Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

⁶² *Id.* at 8615.

⁶³ *Id.*

⁶⁴ *Id.* at 8616.

⁶⁵ *Id.* at 8617.

⁶⁶ Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 11, 2025).

⁶⁷ *Id.* at 9279.

⁶⁸ *Id.* at 9280.

⁶⁹ Craig Trainor, Acting Assistant Secretary for Civil Rights, United States Department of Education, Dear Colleague Letter, p. 1, (Feb. 4, 2025) <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl> (footnotes omitted).



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”⁷⁰

ISBE’s and CPS’s Continued Subordination of Sex to “Gender Identity”

Notably, despite CPS’s issuance of multiple interim guidance documents in advance of the effective date of the 2024 Rule to align its policies with the unlawful mandates of the Biden Education Department, it does not appear that ISBE or CPS has issued any substantive updates to its Title IX guidance since the U.S. District Courts for the Eastern District of Missouri and the Northern District of Texas vacated that rule.

In fact, despite the overwhelming rejection of the 2024 Rule by courts across the country and the Department’s enforcement posture, CPS has ignored its obligations imposed by Title IX. For instance, on November 14, 2024, the Chicago Board of Education responded to the election of President Trump by approving⁷¹ a resolution reiterating its nondiscrimination policy, which includes, as spelled out in its interim guidelines on “Gender & Sexuality Protections for CPS Students,” access to intimate facilities on the basis of “gender identity.”⁷²

On January 10, 2025, CPS Chief Executive Officer Pedro Martinez and Chief Education Officer Bogdana Chkoumbova released a letter to CPS families containing guidance and resources “regarding [the] new presidential administration.”⁷³ That letter states that, “[s]pecific for our LGBTQ+ students, the Board has codified specific guidelines for schools to follow, on everything from preventing bullying and bias-based harm” and “protecting bathroom access”⁷⁴ The letter links to a document and a webpage, both of which include the “Gender & Sexuality Protections for CPS Students” interim guidance discussed above that mandates access to intimate facilities on the basis of “gender identity.”⁷⁵ It states that “[w]e will continue to follow these guidelines to ensure CPS standards strong in protection of our LGBTQ+ students and staff.”⁷⁶

CPS also maintains a webpage entitled “Guidance and Resources Regarding New Presidential Administration” that refers and links to the school district’s resources regarding “protecting

⁷⁰ *Id.* at 2.

⁷¹ Chicago Board of Educ., *Non-Delegable Board Reports that Require Member Action*, (Nov. 14, 2024) <https://www.cpsboe.org/meetings/board-actions/4414>.

⁷² Chicago Board of Educ., *Board Report*, at p. 1, (Nov. 14, 2024) https://www.cpsboe.org/content/actions/2024_11s/24-1114-RS2.pdf.

⁷³ Chicago Public Schools, *Updated Guidance and Resources for Families Regarding New Presidential Administration*, (Jan. 10, 2025) <https://www.cps.edu/media/community-updates/2025/january/presidential-administration/>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*



bathroom access” on the basis of “gender identity.”⁷⁷ While CPS states that “[t]he content on this page will continue to evolve based on our response to policy changes at the federal level,”⁷⁸ it does not appear to be evolving fast enough to keep up with the decisions of a plethora of federal courts blocking or vacating the 2024 Rule or the 2025 Title IX DCL announcing a return to Title IX enforcement on the basis of sex, biological and binary (male or female). Instead, the webpage states that “CPS will continue to rely on state law, local ordinances, and our District’s own strong guidelines” in ordering schools to prohibit discrimination by allowing access to intimate facilities on the basis of “gender identity” rather than sex.⁷⁹

As discussed below, these statements demonstrate that CPS blatantly disregards the import of the federal court decisions enjoining and vacating the 2024 Rule: forcing students or employees to share intimate facilities with members of the opposite sex as a condition of participating in an education program or activity illegally excludes access to and denies the benefits of that program or activity on the basis of sex. Any state law or local ordinance to the contrary cannot stand in the way of Title IX’s nondiscrimination guarantee.

CPS Failure to Address Violence in Bathrooms and Elsewhere on Campus

Recent CPS legal settlements illustrate the school system’s failure to police inappropriate behavior in the intimate facilities of its schools, placing in serious doubt the district’s attempt to reassure students that CPS will address any misbehavior by students of the opposite sex who access bathrooms on the basis of asserted “gender identity.”

For example, on February 27, 2025, the Chicago Board of Education approved a settlement of multiple cases for nearly \$4 million, including a \$2.75 million payment to the family of a boy whose fourth-grade teacher allowed her adult friend to beat the boy in a school bathroom prior to

⁷⁷ Chicago Public Schools, *Guidance and Resources Regarding New Presidential Administration*, <https://www.cps.edu/services-and-supports/new-presidential-administration-guidance/> (last visited Mar. 10, 2025).

⁷⁸ *Id.*

⁷⁹ *Id.* The guidance states that it is consistent with the Illinois Human Rights Act and the Chicago Human Rights Ordinance. Unlike the Illinois Human Rights Act, however, the Chicago ordinance, which does require “gender identity”-based access to intimate facilities in “public accommodations,” does not explicitly include public schools in its definition of “public accommodations,” which it defines as “a place, business establishment or agency that sells, leases, provides or offers any product, facility or service to the general public, regardless of ownership or operation (i) by a public body or agency; (ii) for or without regard to profit; or (iii) for a fee or not for a fee.” City of Chicago Commission on Human Relations, *Ordinances*, at p. 12, (May 24, 2023) <https://www.chicago.gov/content/dam/city/depts/cchr/AdjSupportingInfo/AdjFORMS/2023AdjudicationForms/Ordinance%20Booklet%2005.24.2023.pdf>. Regardless of the ordinance’s actual scope, CPS has chosen to apply its “gender identity”-based facilities access provisions to its public K–12 schools.



class.⁸⁰ In 2022, just prior to trial, CPS settled for nearly \$1.6 million in lawsuits brought by the families of two students with disabilities because another student had raped them in a high school bathroom eight months apart—and that, in the period between the two crimes, CPS had never informed the assailant’s teachers of the initial alleged rape.⁸¹ Just prior to that settlement, CPS agreed to settle a lawsuit over an eerily similar incident—an alleged sexual assault against a special-needs student in an elementary school bathroom—for \$1 million.⁸²

These settlements speak volumes about CPS’s refusal to police inappropriate behavior in its school bathrooms. Alarming, they also echo the findings of a 2018 OCR investigation of the school district that resulted in the Department’s withholding of \$4 million in grants due to widespread violations of Title IX in the district’s responses to sexual assault and raise strong concerns about CPS’s continued adherence to the landmark resolution agreement resulting from that investigation.⁸³ These horrible cases of neglect and abuse of vulnerable students, combined with the school district’s blithe dismissal of the prospect that a male student might lie about his “gender identity” to gain access to the girls’ bathroom as “not something that happens,”⁸⁴ raise grave concerns that CPS is incapable or unwilling to prevent criminal behavior that occurs in its intimate facilities. Further, in light of CPS’s pushback against any questioning of its facilities access policies and penalties—including termination⁸⁵—for preventing any student from accessing the facilities that align with his or her “gender identity,” even staff members who are concerned about CPS’s bathroom access policies likely will feel constrained against questioning any student’s assertion of “gender identity” for the purpose of using a particular sex-separated facility or monitoring that student’s use of such sex-separated spaces.

⁸⁰ See Becky Vevea, *Chicago School Board Approves nearly \$4 Million in Legal Settlements*, Chalkbeat Chicago, (Feb. 27, 2025) <https://www.chalkbeat.org/chicago/2025/02/28/cps-board-of-education-approves-4-million-in-legal-settlements/>.

⁸¹ See Dana Kozlov, *After Fighting Lawsuits, CPS Settles with Families Who Say Sons with Disabilities Were Raped in School Bathrooms*, CBS News, (Mar. 21, 2022) <https://www.cbsnews.com/chicago/news/cps-settles-with-families-who-say-sons-with-disabilities-raped-in-school-bathrooms/>.

⁸² See Nadar Issa, *CPS Reaches Settlements in 3 Special Ed Students’ Sex Assault Lawsuits*, Chicago Sun Times, (Feb. 23, 2022) <https://chicago.suntimes.com/education/2022/2/23/22946916/cps-public-schools-sexual-abuse-assault-lawsuit-jordan-community-elementary-special-education>.

⁸³ See Sasha Ingber, *Chicago Schools Lose Millions for Allegedly Not Shielding Students from Sexual Abuse*, NPR, (Sept. 28, 2018) <https://www.npr.org/2018/09/28/652802708/chicago-schools-lose-millions-for-allegedly-not-shielding-students-from-sexual-a>; Patrick Andriesen, *Violent Crime Surges 26% at Chicago Public Schools, Arrests Hit Record Low*, Illinois Policy, (May 3, 2024) <https://www.illinoispolicy.org/violent-crime-surges-26-at-chicago-public-schools-arrests-hit-record-low/> (noting a 26 percent rise in violent crime at CPS schools in 2023—including sexual assaults—and a “record low” 18 arrests).

⁸⁴ *Supra* note 51.

⁸⁵ *Supra* note 38.



Law

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*.”⁸⁶

Consistent with this principle, in its 2020 amendments to Title IX’s implementing regulations, 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.”⁸⁷ 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.”⁸⁸

Thus, if the requirements of a state or local law conflict with those of a federal law—such as Title IX—then federal law governs. If Title IX prohibits schools from forcing girls and women to share bathrooms, locker rooms, and showers with boys and men, then the Illinois legislature and the Chicago City Council have no authority to require the contrary.

Parental Rights

In its seminal 1925 decision *Pierce v. Society of Sisters*,⁸⁹ the Supreme Court held that an Oregon law requiring eight- to sixteen-year-old children to attend public schools violated the Constitution because it “unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control.”⁹⁰ That decision has never been overruled and remains good law today.

Title IX and the Meaning of “Sex”

⁸⁶ U.S. CONST. art. VI, cl. 2 (emphasis added).

⁸⁷ *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) (§ 106.6(h)).

⁸⁸ 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) <https://www.ed.gov/about/news/press-release/office-civil-rights-launches-title-ix-violation-investigations-maine-department-of-education-and-maine-school-district>.

⁸⁹ 268 U.S. 510 (1925).

⁹⁰ *Id.* at 534–35.



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.⁹¹ 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.”⁹² Since the Department of Health, Education, and Welfare issued its first regulations implementing Title IX in 1975, Title IX regulations have permitted recipients of federal education funding to “provide separate, toilet, locker room, and shower facilities on the basis of sex” as long as “such facilities provided for students of one sex” are “comparable to such facilities provided for students of the other sex.”⁹³

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.⁹⁴ 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.”⁹⁵ Most recently, in denying an application for a stay of two injunctions blocking the Department’s 2024 Rule, a *per 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 2024 Rule] were entitled to preliminary injunctive relief as to three provisions of the rule, including the central provision that newly defines sex discrimination to include discrimination on the basis of sexual orientation and gender identity.”⁹⁶

Analysis

EO 14168, EO 14201, and the 2025 Title IX DCL recognize that Title IX, since its adoption in 1972, prohibits discrimination only on the basis of sex—binary (male or female) and biological—not “gender identity” and does not permit recipients of federal funding to deny equal opportunities in their education programs or activities on the basis of sex for the purpose of allowing individuals to access whatever facilities they choose based on their asserted “gender identity.” Yet this is exactly what ISBE and CPS have done here and what they plan to do in the future if left unchecked.

⁹¹ 20 U.S.C. § 1681(a).

⁹² 20 U.S.C. § 1686.

⁹³ 34 C.F.R. § 106.33.

⁹⁴ 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.”)).

⁹⁵ *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

⁹⁶ *Dep’t of Educ. v. Louisiana*, No. 24A78, slip op. at 2 (U.S. Aug. 16, 2024).



It should be uncontroversial that requiring a student to undress in the same facilities as or shower next to a member of the opposite sex deprives that student of educational opportunities because it requires that student to divest himself or herself of the dignity afforded him or her as a human being as a condition of accessing the benefits of that education program or activity.⁹⁷ 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 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 sex⁹⁸—during one’s lifetime. Thus, Title IX requires those institutions that it binds, including ISBE and CPS, to recognize the dignity of boys and girls in maintaining their privacy. By implementing policies to the contrary, that is exactly what these entities are refusing to do. A recipient of federal financial assistance cannot demand that a student disregard his or her biological sex and related

⁹⁷ 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).

⁹⁸ CPS’s Office of Student Health and Wellness has published a revealing description of this spectrum of “gender identities” that confirms beyond a doubt that the concept is far removed from the sex-based protections of Title IX. Healthy CPS, *Key Terms: A Guide for Understanding LGBTQ+ Identities*, p. 2, <https://www.cps.edu/globalassets/cps-pages/services-and-supports/health-and-wellness/healthy-cps/healthy-environment/lgbtq-supportive-environments/key-terms-for-understanding-lgbtq-identities.pdf> (last visited Mar. 10, 2025) (“Genderqueer: Commonly used to describe a person whose gender identity is neither male nor female, is between or beyond genders, or is some combination of genders. . . . Non-binary: A continuum or spectrum of gender identities and expressions that is outside of the binary gender categories of man and woman. . . . Queer: An umbrella term used to describe sexual orientation, gender identity, or gender expression for individuals who do not conform to dominant societal norms. . . . Questioning means that someone is unsure of, or questioning, their gender or sexual identity. They might come to identify with another LGBTQ+ identity later in life, or they may not. It’s developmentally appropriate for young people to be questioning their identities, so remember that it’s important to remind young people that you support the LGBTQ+ community, even if they haven’t told you they identify as LGBTQ+.”).



privacy interest in sex-separated intimate facilities as the price of participation in the recipient's educational program or activity.⁹⁹

Illinois law and, to the extent it applies to public schools, Chicago's Human Rights Ordinance provide no legal defense to these education entities. ISBE and CPS may argue that Title IX's prohibition of "discrimination on the basis of sex" does nothing to bar them from recognizing additional grounds on which to prohibit discrimination, including "gender identity." But if that argument is at all legitimate, it certainly does not justify the subordination of protections on the basis of sex as required by Title IX to a guarantee of unfettered access to intimate facilities on the basis of "gender identity" in education programs or activities.¹⁰⁰ In such a context, allowing access to an individual based on his or her "gender identity," no matter how sincerely asserted, unequivocally conflicts with the privacy interests of individuals to use the restroom, sleep, undress, or shower in the presence only of members of the same sex. Illinois has chosen to make one's "gender identity" superior to sex by requiring that access to restrooms and locker rooms be governed by "gender identity" instead of "sex." Title IX, on the other hand, requires that schools not force students or employees to shear themselves of privacy and dignity—and thus be deprived of equal educational opportunities—by sleeping or undressing in the presence of someone of the opposite sex. Illinois law conflicts with Title IX; therefore, Illinois law and CPS policy must yield.¹⁰¹

⁹⁹ Recent events at a middle school in Illinois's Deerfield School District 109 starkly illustrate how Illinois law and policy deprive students of their right to privacy by conditioning participation in educational programs and activities on agreeing to undress in the presence of individuals of the opposite sex. A student's mother has alleged that District 109 administrators responded to objections from her daughter and other female students to the presence of a biological male who identifies as female in the girls' locker room by reprimanding the girls and even coercing them to undress in the male student's presence. See LGIS News Service, *Deerfield Middle School Administrators Force Teen Girls to Change in Front of Boy in School Locker Room*, Lake County Gazette, (Mar. 14, 2025) <https://lakecountygazette.com/stories/670490969-deerfield-middle-school-administrators-force-teen-girls-to-change-in-front-of-boy-in-school-locker-room>. Shaming middle school girls over their objection to undressing in the presence of a biological male—the absurd and harmful endpoint of Illinois's prioritization of "gender identity" over sex—is a shocking inversion of Title IX's nondiscrimination guarantees.

¹⁰⁰ See *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 814 (11th Cir. 2022) ("Reading 'sex' [in Title IX] to include 'gender identity,' and moving beyond a biological understanding of 'sex,' would provide more protection against discrimination on the basis of transgender status under the statute and its implementing regulations than it would against discrimination on the basis of sex.").

¹⁰¹ Moreover, ISBE and CPS are also denying parents their constitutionally protected right to direct the upbringing and education of their child by requiring their employees to withhold information from them regarding whether their child is sharing a bedroom with a member of the opposite sex on overnight trips. *Supra* notes 31, 48. Any reliance on state law to justify such a



Through their policies, ISBE and CPS are carrying out a state statute that directly conflicts with Title IX’s nondiscrimination guarantee. They are not entitled to receive any amount of federal funding if they persist in doing so.

Conclusion

Title IX prohibits discrimination on the basis of sex—not “gender identity”—in federally funded education programs and activities. ISBE and CPS are in violation of Title IX because these entities, by forcing students to share intimate facilities with members of the opposite sex as a condition of participation in their education programs and activities, prioritize “gender identity” over sex. Simply put, the “gender identity” policies of ISBE and CPS effectively erase “sex” from Title IX. Accordingly, we urge OCR to investigate the allegations in this complaint and ensure that ISBE and CPS comply with Title IX at the risk of loss of federal funds, as well as provide other appropriate relief.

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

Sincerely,

/s/ Robert S. Eitel

Robert S. Eitel
President and Co-Founder
Defense of Freedom Institute
for Policy Studies

/s/ Jacob Huebert

Jacob Huebert
President
Liberty Justice Center

policy of keeping parents in the dark on their child’s privacy and safety is of no import because it violates federal constitutional rights.