



PARENTS

Parental Action and Rights Enforcement
to ensure Notice, Transparency, and Safety

— A Liberty Justice Center initiative —



August 4, 2026

Via mail & e-mail

Attorney General Jennifer Davenport
New Jersey Office of the Attorney General
25 Market Street
Trenton, NJ 08625
ocs@njoag.gov

Re: Secret gender transition policies across New Jersey school districts

Dear Attorney General Davenport:

I write on behalf of Liberty Justice Center, a public interest legal organization whose mission is to provide pro bono services to Americans facing the loss of their rights as a result of the abuse of government power.

The purpose of this letter is to inform you that approximately **130 New Jersey school districts** have student gender identity confidentiality policies burdening the federal rights of parents. As shown in a first-of-its-kind list compiled by [Defending Education](#),¹ these districts openly state that district personnel can or should keep a student's transgender status hidden from their parents. As discussed below, the New Jersey Department of Education's guidance opposing parental notification have contributed to the adoption and maintenance of these unlawful district policies.

For the reasons set forth below, your office should immediately advise the identified school districts of their obligation to comply with federal law and provide parents with essential information concerning the welfare of their children.

¹ *List of School District Transgender – Gender Nonconforming Student Policies*, Defending Education, available at <https://defendinged.org/investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/>.

1. The First and Fourteenth Amendments require parental notification of children's attempts to transition genders.

A recent decision by the U.S. Supreme Court concerning a California secret gender transition policy makes it clear that parents have the legal right to be informed of their children's attempts to socially transition genders at school.

In *Mirabelli v. Bonta*², the Supreme Court considered a challenge to California policies requiring schools to withhold information from parents concerning a student's attempted gender transition at school unless the student consented to disclosure. In one instance, even after the parents learned of the school's actions and directed that they cease, school officials continued to use the student's asserted name and pronouns, leaving the decision to the child rather than permitting the parents to direct their child's upbringing. The policies also provided no religious accommodation for parents whose sincerely held religious beliefs conflicted with the school's actions.

During litigation, the parents claimed that these policies violated their rights under the Free Exercise Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment, and the Supreme Court agreed with them.

In reaching that conclusion, the Court evaluated the parents' likelihood of success on the merits of their claims, and explained that under long-established precedent, parents—not the State—have primary authority with respect to the upbringing and education of children.³ The Court further concluded that policies that substantially interfere with the right of parents to guide the religious development of their children are presumed to be unconstitutional under the First Amendment.⁴ Additionally, the Court found that all parents, including those objecting on nonreligious grounds, are likely to succeed under the Fourteenth Amendment, because long standing precedent includes the parental right not to be shut out of participation in decisions regarding their children's mental health.⁵

Like the California law at issue in *Mirabelli*, secret gender transition policies at approximately **130 New Jersey school districts** violate the sincerely held religious beliefs of parents who feel an obligation to raise their children in accordance with those beliefs. The policies also violate the rights of parents who object on due process grounds. Gender dysphoria is a condition that has an important bearing on a child's mental health, and policies concealing that information from parents likely violate parents' rights to direct the upbringing and education of their children.

² 224 L. Ed. 2d 310 (2026).

³ *Pierce v. Society of Sisters*, 268 U. S. 510, 534– 535 (1925); *Meyer v. Nebraska*, 262 U. S. 390, 399–400 (1923).

⁴ *Mahmoud v. Taylor*, 606 U.S. 522, 559 (2025) (citing *Wisconsin v. Yoder*, 406 U. S. 205 (1972)).

⁵ *Parham v. J. R.*, 442 U.S. 584, 602 (1979).

By maintaining secret gender transition policies, the identified New Jersey school districts expose themselves to potential federal lawsuits premised on the First and Fourteenth Amendments to the U.S. Constitution.

2. The Family Educational Rights and Privacy Act (FERPA) requires parents to be notified of their children's gender transition.

FERPA governs communications between schools and parents regarding students' education and education records.⁶ FERPA defines "education records" as documents that "contain information directly related to a student" and "are maintained by an educational agency or institution."⁷ Schools that receive federal funds must guarantee parental access to student education records and the ability to contest and correct errors within those records.⁸

Any record created by a school pertaining to a child's gender transition is obviously a record that "contain[s] information directly related to a student" and is "maintained by an educational agency," and therefore falls within the coverage of FERPA. As such, those records must be accessible to parents.

This information is especially important given the context. Numerous studies report elevated rates of depression, suicidal ideation, and suicide attempts among youth experiencing gender dysphoria.⁹ Those realities underscore the importance of early recognition, appropriate intervention, and coordinated care. As illustrated in *Mirabelli*, withholding school records or other information concerning a student's gender dysphoria or related school accommodations may prevent parents from recognizing when their child is struggling and obtaining appropriate support.

But policies at approximately **130 school districts** across New Jersey withhold this information from parents, and not only raise the constitutional concerns discussed above, but allow schools to withhold information from parents concerning their children's potential increased risk of psychological, emotional, and physical harassment, including the risk of suicide attempts resulting from gender dysphoria.

Such policies not only risk harming vulnerable children, but to the degree they interfere with parents' rights under FERPA they violate federal law, and expose those districts to investigations by the United States Department of Education.

⁶ 20 U.S.C. § 1232g.

⁷ *Id.* at (a)(4)(A).

⁸ *Id.* at (a)(2).

⁹ *E.g., Standards of Care for the Health of Transgender and Gender Diverse People*, Version 8, WPATH, International J. Trans. Health 2022, Vol. 23, No. S1 (2022).

3. In a conflict with state law, the U.S. Constitution and federal law are supreme.

As the Court made clear in *Mirabelli*, an asserted conflict with New Jersey law is not a valid excuse for continuing policies that conflict with parents' federal rights.¹⁰

Federal law preempts state law when it is impossible to comply with both federal and state law, or when state law stands as an obstacle to the accomplishment of federal objectives.¹¹ Laws like New Jersey Policy 5756, also known as the "Transgender Students" policy, which is based on N.J. Statute § 18A:36-41, qualifies under both preemption theories.

Policy 5756's instruction to New Jersey School Districts to keep children's gender dysphoria a secret from their parents stands in direct opposition to federal requirements. As noted, both religious and non-religious parents have rights protected by the U.S. Constitution to direct the upbringing and education of their children. Secret gender transition policies undermine these rights, which preempt state laws to the contrary. Further, FERPA preempts Policy 5756 because any record created by a school pertaining to a child's gender transition would be a record that "contain[s] information directly related to a student" and is "maintained by an educational agency," therefore falling within FERPA.

In a contest between state preferences and federal requirements, federal law is supreme, and New Jersey should not wait for lawsuits or other legal actions in order to comply with federal requirements.

4. Courts have recognized the primacy of long-established parental rights, and will continue to do so.

The courts continue to recognize that state obstacles to parental rights must give way in the face of the federal Constitution. The most recent example of this dynamic was again in California, this time at the U.S. Court of Appeals for the Ninth Circuit.

On the June 18, in the *City of Huntington Beach v. Newsom*, a three-judge panel of the Ninth Circuit granted a preliminary injunction protecting parents from enforcement of a similar parental nondisclosure policy. The same panel had denied this relief twice before. What changed was the Supreme Court's decision in *Mirabelli*. The Court declares that "[i]n light of *Mirabelli*, [California's policy] thus forbids the mandatory policies that the Constitution requires with respect to information about a child exhibiting symptoms of gender dysphoria." New Jersey need not wait for a federal court to reach the same conclusion.

¹⁰ See 224 L. Ed. at 312.

¹¹ U.S. Const. art. VI, cl. 2); *McCulloch v. Maryland*, 17 U.S. 316, 427 (1819); *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992).

The constitutional questions have now been squarely presented, and the legal issues are no longer theoretical. Your office should reevaluate the state's current position to ensure that New Jersey's policies and enforcement actions comply with parents' federally protected rights before further litigation compels that result.

For the reasons set forth above, your office should immediately advise the identified New Jersey school districts of their obligation to comply with federal law, including the First and Fourteenth Amendments and FERPA. Failure to do so may lead to federal investigations or lawsuits for the violation of federal civil rights.

Sincerely,

/s/TR Snowball

Timothy R. Snowball, Esq.
Senior Attorney

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of the Liberty Justice Center