



March 26, 2025

Craig Trainor

Acting Assistant Secretary for the Office for Civil Rights

United States Department of Education

400 Maryland Avenue, SW

Washington, DC 20202-1100

Request for investigation regarding violations of Title IX of the Higher Education Act of 1972 by the K-12 public-school system in Bethel, Ohio

Dear Acting Assistant Secretary Trainor:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law, ensure due process and equal protection for all Americans, and combat invidious discrimination on the basis of race, color, national origin, and sex in America’s schools.

Consistent with the principles set forth in President Trump’s January 29, 2025, Executive Order 14190 entitled “Ending Radical Indoctrination in K-12 Schooling,” AFL respectfully requests that the Department of Education open an investigation into the Bethel Local School District in Ohio.

This school district violates Title IX by maintaining policies that permit transgender students to use sex-segregated intimate facilities consistent with their “gender identity” and inconsistent with their sex, while denying similarly situated individuals, whose “gender identity” is the same as their sex, the ability to feel safe and comfortable in the use of the sex-segregated common restrooms and locker rooms. Indeed, Bethel Local School District has taken the position that the use of sex segregated intimate facilities is prohibited by Title IX and that accommodations based on gender identity are required. *See* Dec. of Matthew Crispin, *Doe v. Bethel Local School District Board of Education*, No. 3:22-cv-00337 at ¶15 (S.D. Ohio, Jan. 9, 2023) (ECF 18-5) (¶6 “Principal Swope and I know Anne [Roe] to be a transgender girl entering the High School as a ninth grader at the time of this meeting. Principal Swope and I confirmed for the Roe family the accommodation remains in place unless School District legal counsel advises otherwise.” ¶15 “Board Policy 5517 Student Anti-Harassment (BOE 220-245) is the Board Policy administration applies, as advised by Board of Education legal counsel, to continue to grant the accommodation requested on behalf of Anne Roe.”; Dec. of Barrett Swope, *Doe v. Bethel Local School District Board of Education*, No. 3:22-cv-00337 at ¶13 (S.D. Ohio, Jan. 10, 2023) (ECF

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21-1) (¶5 “Superintendent Crispin and I know Anne to be a transgender girl entering the High School as a ninth grader at the time of this meeting. Superintendent Crispin and I confirmed the accommodation remains in place unless School District legal counsel advises otherwise.” ¶13 “Board Policy 5517 Student Anti-Harassment is the Board Policy administration applies, as advised by Board of Education legal counsel, to continue to grant the accommodation requested on behalf of Anne Roe.”) (Attached as Appendix 1).

The Relevant Policies and Regulations

For more than one hundred years, the Bethel Local School District separated its intimate spaces based on sex, requiring men and women to use separate restrooms, locker rooms, and other similar facilities. *See* Complaint, *Doe v. Bethel Local School District Board of Education*, No. 3:22-cv-00337 at ¶1 (S.D. Ohio, Nov. 22, 2022) (ECF 1). However, in January 2022, the Bethel Local School District Board of Education changed that policy, allowing male students to use female facilities and female students to use male facilities, if the students identified as transgender. *See id* at ¶ 2-8.

Bethel Local School District accomplished this change in bathroom policy by re-interpreting its policy prohibiting discrimination based on sexual orientation and gender identity. *See* Bethel Local School District Policy Manual § 5517 (available at <https://perma.cc/N5VX-JNK3>). The District has since explained that this nondiscrimination policy, interpreted in light of Title IX, requires it to make intimate spaces like bathrooms available on the basis of gender identity. *See* Appendix 1.

Bethel has repeatedly chosen to defend this policy against community complaints and is currently fighting to uphold it in the Sixth Circuit Court of Appeals, against a coalition of students and parents. *See* Corrected Brief of Appellees, *Doe v. Bethel Local School District Board of Education*, No. 23-3740 (6th Cir., May 15, 2024).

Bethel Local School District’s Bathroom Policy Violates Title IX

The Supreme Court of the United States has held that “[s]ex, like race and origin, is an immutable characteristic determined solely by the accident of birth.” *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973). Further, sex discrimination, as defined by Title IX, means discrimination on the basis of biological sex, not gender identity. *See Adams v. Sch. Bd. of St. Johns Cty.*, 57 F.4th 791, 811-12 (11th Cir. 2022).

Despite the obvious and well-settled principle that sex is an immutable characteristic, the Biden Administration had issued a rule interpreting Title IX that jettisoned the reality of biological sex in favor of “gender identity.” In June and July of 2024, numerous federal district courts enjoined the Biden Administration’s rule on the grounds that Title IX prohibits discrimination on the basis of sex, not gender identity.

See, e.g., Oklahoma v. Cardona, No. CIV-24-00461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. U.S. Dep’t of Educ.*, No. 4:24 CV 636 RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Carroll Indep. Sch. Dist. v. U.S. 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. U.S. Dep’t of Educ.*, No. 24-4041-JWB, 2024 WL 3273285, at *12-13 (D. Kan. July 2, 2024); *Tennessee v. Cardona*, No. CV 2:24-072-DCR, 2024 WL 3631032 (E.D. Ky. July 10, 2024); *Louisiana v. U.S. Dep’t of Educ.*, 737 F. Supp. 3d 377 (W.D. La. 2024).

Following an appeal from the Fifth and Sixth Circuits’ denial of a stay of the injunctions issued by the District Courts for the Western District of Louisiana and the Eastern District of Kentucky, the Supreme Court of the United States upheld those denials. *See United States Dep’t of Educ. v. Louisiana*, 603 U.S. 866 (2024). Notably, all nine justices “accept[ed] that the plaintiffs 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*.” *Id.* at 867 (emphasis added). On January 9, 2025, the Federal District Court for the Eastern District of Kentucky granted a permanent, nationwide injunction on the Biden Administration’s unlawful rewrite of Title IX. *See Tennessee v. Cardona*, No. CV 2:24-072-DCR, 2025 WL 63795 (E.D. Ky. January 9, 2025).

Because the Biden-Harris rules have been enjoined, the prior rules, which prohibit the above-described discrimination, control. *See* United States Department of Education, Office of the Assistant, Dear Colleague Letter (January 31, 2025), <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl>.

Further, Title IX prohibits discrimination on the basis of sex and cannot be expanded by rule to require recipients of federal funds to issue policies prohibiting discrimination on the basis of “gender identity.” But it should be equally clear that allowing transgender students to feel safe and comfortable by using common restrooms and locker rooms consistent with their subjective “gender identity,” but not their biological sex, results in the very thing that Title IX is designed to prohibit—discrimination on the basis of sex. *See* Memorandum from Reed Rubinstein to Acting Assistant Sec’y Kimberly M. Richey, Off. for Civ. Rights, U.S. Dep’t of Educ., Off. of the Gen. Couns. (Jan. 8, 2021) (Attached as Appendix 2).

The relevant policy and the application of that policy in Bethel, Ohio illustrates that exact point. In the Bethel Local School District, a transgender student can obtain access to the sex-segregated common intimate facilities of the opposite sex because it is consistent with their desire to feel safe and comfortable in their subjective sense of “gender identity.” But when other students whose “gender identity” is the same as their biological sex object on the grounds that they now feel unsafe and uncomfortable in the common sex-segregated intimate facilities that have traditionally been

designated exclusively for their sex, those students' only option is to use a private restroom, an option that was considered too burdensome for a transgender student in the first place. See Complaint, *Doe v. Bethel Local School District Board of Education*, No. 23-3740 at 3 (6th Cir., Feb. 14, 2024) (ECF 18); *Grimm v. Gloucester Cty. School Brd.*, 972 F.3d 586, 603 (4th Cir. 2020) (holding that failure to provide a transgender student access to an opposite sex intimate facility violated the transgender students equal protection rights, even when a single-stall restroom was available for any student).

In other words, the relevant policies provide greater rights to students whose "gender identity" does not match their sex than it does to students whose "gender identity" matches their sex. Thus, these policies erase the very concept of sex in favor of "gender identity" and codify discrimination "on the basis of sex." Cf. *Bostock v. Clayton Cty.*, 590 U.S. 644, 665 (2020) (when discrimination is motivated by the difference between expressed sex identity and biological sex, "it necessarily and intentionally discriminates" because of sex).

Additionally, all the highlighted school district policies make clear that "gender expression" is the way students assert their "gender identity." In other words, a boy can express his "gender identity" as female merely by adopting the appearance, clothing, hairstyles, behavior, activities, voice, or mannerisms of girls. This is the exact type of sex-based classification that patently "rest[s] on impermissible stereotypes" and is unlawful sex discrimination. *J.E.B. v. Alabama*, 511 U.S. 127, 139 n.11 (1994). Such discriminatory classifications only "serve to ratify and perpetuate invidious, archaic, and overbroad stereotypes about the relative abilities of men and women." *Id.* at 130-31.

Bethel Local School District's bathroom policy is the exact type of policy that Executive Order 14190, "Ending Radical Indoctrination in K-12 Schooling" issued on January 29, 2025 is looking to eliminate. President Trump's Executive Order calls for a "strategy" to eliminate "Federal funding or support for illegal and discriminatory treatment and indoctrination in K-12 schools, including based on gender ideology and discriminatory equity ideology." Bethel Local School District's policy requires discriminatory treatment and it indoctrinates its student population into gender ideology. Whatever strategy the Secretary of Education recommends to President Trump, it must include withdrawing federal funds from public schools with bathroom policies similar to Bethel Local School District.

Conclusion

The policies of the Bethel Local School District have eliminated the protections that Title IX requires of K-12 institutions that accept federal funding, and it's policies run afoul of President Trump's January 29, 2025, Executive Order 14190. For far too long, Bethel Local School District has disingenuously told parents that they are required

by law to abandon protections from discrimination on the basis of sex in favor of policies that eviscerate the notion of sex itself and replace it with “gender identity.” The recent injunctions against the similar position taken by the Biden Administration’s lawless Title IX rewrite make clear that these school districts have it wrong. As these school districts have shown no inclination to end their blatantly discriminatory policies, the Department of Education should immediately open investigations into these schools and, if necessary, cut off all federal funding.

Sincerely,

/s/ Jacob Meckler

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