



November 10, 2025

**Via Email**

The Honorable Kim Richey  
Assistant Secretary  
Office for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

The Honorable Harmeet Dhillon  
Assistant Attorney General  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

**Re: Title IX Complaint Against Westford, MA Public Schools**

Dear Assistant Secretary Richey and Assistant Attorney General Dhillon:

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

AFL represents Travis Rowley, a parent with children in the Westford school system. Pursuant to the discrimination complaint resolution procedures of the U.S. Department of Education’s Office for Civil Rights (“OCR”), AFL files this complaint against Westford Public Schools (“WPS”) on behalf of Mr. Rowley 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”).<sup>1</sup>

We request that OCR investigate the actions described below. In the event the Department of Education (“Department”) finds WPS has violated federal law, the Department holds the authority pursuant to Section 1682<sup>2</sup> to put WPS on clear notice of its legal obligation to comply with federal law in immediately restoring sex-separated access by its students to WPS locker rooms and other intimate facilities. Should the Department conclude WPS has violated federal law, the Department may

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<sup>1</sup> 20 U.S.C. § 1681 *et seq.*

<sup>2</sup> *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.”).

impose sanctions against WPS by withdrawing federal funding as authorized under Title IX.<sup>3</sup>

## I. Title IX prohibits discrimination based on sex.

Title IX prohibits discrimination based on sex. Under Title IX, sex-based discrimination encompasses any differential treatment or exclusion that occurs because of an individual's 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.<sup>4</sup>

The statute 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."<sup>5</sup> Title IX regulations also permit recipients of federal education funding to "provide separate, toilet, locker room, and shower facilities on the basis of sex" so long as "such facilities provided for students of one sex" are "comparable to such facilities provided for students of the other sex."<sup>6</sup>

The Supreme Court of the United States has held, "Sex, like race and origin, is an immutable characteristic determined solely by the accident of birth."<sup>7</sup> Further, sex discrimination as defined by Title IX means discrimination on the basis of biological sex, not gender identity.<sup>8</sup>

Despite the obvious and well-settled principle that sex is an immutable characteristic, the Biden Administration 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 based on sex, not gender identity.<sup>9</sup>

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

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<sup>3</sup> *Id.*

<sup>4</sup> 20 U.S.C. § 1681(a).

<sup>5</sup> 20 U.S.C. § 1686.

<sup>6</sup> 34 CFR § 106.33 (2024).

<sup>7</sup> *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

<sup>8</sup> *See Adams v. Sch. Bd. of St. Johns Cty.*, 57 F.4th 791, 811-12 (11th Cir. 2022).

<sup>9</sup> *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).

the Eastern District of Kentucky, the Supreme Court of the United States upheld those denials.<sup>10</sup> 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*.”<sup>11</sup> 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.<sup>12</sup> Because the Biden Administration’s rule has been enjoined, the prior rule prohibiting the above-described discrimination controls.<sup>13</sup>

Title IX thus prohibits discrimination on the basis of *biological 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 “gender expansive and 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.<sup>14</sup>

On January 20, 2025, President Trump rescinded the Biden Administration’s illegal rule and replaced it with a lawful policy via Executive Order.<sup>15</sup> The Order states that “‘sex’ is not a synonym for and does not include the concept of ‘gender identity’” and that the “two sexes ... are not changeable and are grounded in fundamental and incontrovertible reality.” The Order made clear that the “Executive Branch will enforce all sex-protective laws to promote this reality.”<sup>16</sup> The Executive Order also directs the federal government to “prioritize investigations and litigation to enforce the rights and freedoms identified,” and that “federal funds shall not be used to promote gender ideology [and] to assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.”<sup>17</sup>

## II. WPS’s transgender policy discriminates based on sex.

Westford’s policy on “Transgender and Gender Nonconforming Students” provides rules for facilitating student transitions as early as elementary school, student name

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<sup>10</sup> See *United States Dep’t of Educ. v. Louisiana*, 603 U.S. 866 (2024).

<sup>11</sup> *Id.* at 867 (emphasis added).

<sup>12</sup> See *Tennessee v. Cardona*, No. CV 2:24-072-DCR, 2025 WL 63795 (E.D. Ky. January 9, 2025).

<sup>13</sup> See United States Department of Education, Office of the Assistant, Dear Colleague Letter (January 31, 2025), <https://perma.cc/B9N8-EQAL>.

<sup>14</sup> 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) (on file with author).

<sup>15</sup> Exec. Order No. 14168, 90 Fed. Reg. 8615, 8615 (Jan. 20, 2025).

<sup>16</sup> Exec. Order No. 14168, 90 Fed. Reg. 8615, 8615 (Jan. 20, 2025).

<sup>17</sup> *Id.* at 8616–17.

and gender marker changes, and sex-separated intimate facilities. Exhibit A.<sup>18</sup> Under the policy for restrooms, locker rooms, and changing facilities, “students shall have access to facilities that correspond to their gender identity.”<sup>19</sup> If a student is uncomfortable with sharing the facility with someone of the opposite sex, the student who complains, not the student of the opposite sex, is offered an alternative.<sup>20</sup> According to WPS, requiring the student of the opposite sex to use an alternative “threatens to publicly identify and marginalize the student as transgender and should not be done.”<sup>21</sup>

WPS receives federal funds and provides male and female locker rooms. However, WPS is denying students the educational benefits of sex segregated facilities by allowing students to invade the facilities of the opposite sex based on the arbitrary concepts of gender identity and gender expression. This is a clear violation of Title IX.

Allowing students to use the “restroom, locker room, or changing facilities consistent with their gender identity”<sup>22</sup> but not their biological sex results in discrimination on the basis of sex. That is exactly what WPS sanctions. In WPS, a “transgender or gender nonconforming student” has access to the sex-segregated restrooms and locker rooms of the opposite sex because it is “consistent with their gender identity.”<sup>23</sup> Yet, the only option for those students whose “gender identity” is the same as their biological sex is to use alternative facilities despite their objection that they feel unsafe and uncomfortable in the common sex-segregated restrooms and locker rooms that have traditionally been designated exclusively for their sex. In other words, the relevant policies provide greater rights to students whose “gender identity” does not match their biological sex than it does to students whose “gender identity” matches their biological sex. Thus, these policies erase the very concept of biological sex in favor of “gender identity” and codify discrimination “on the basis of sex.”<sup>24</sup>

Additionally, the WPS policy makes clear that “gender expression” is the way students assert their “gender identity.” In other words, a boy can express his “gender identity” as a 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 “rest[s] on impermissible stereotypes” and is unlawful sex

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<sup>18</sup> See Westford Public Schools, *Transgender and Gender Nonconforming Students, Policy P5325* (Oct. 23, 2017) at 1–4, <https://perma.cc/GT2U-WKS6>.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> See *id.*

<sup>21</sup> *Id.* at 3–4.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.*

<sup>24</sup> 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).

discrimination.<sup>25</sup> Such discriminatory classifications only “serve[] to ratify and perpetuate invidious, archaic, and overbroad stereotypes about the relative abilities of men and women.”<sup>26</sup>

### III. Conclusion

WPS’s policies eliminate the protections that Title IX requires of K–12 institutions that accept federal funding, effectively implement the Biden Administration rule that was enjoined, and run afoul of President Trump’s January 20, 2025, Executive Order. Since 2017, WPS 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.” Because WPS has shown no inclination to end its blatantly discriminatory policy, the Department of Education should immediately open an investigation into this school. If the Department finds WPS is in violation of federal law and fails to immediately cure the same, the Department has remedies available, including cutting off all federal funding to WPS.

Sincerely,

/s/ Alice Kass

America First Legal Foundation

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<sup>25</sup> *J.E.B. v. Alabama*, 511 U.S. 127, 139 n.11 (1994).

<sup>26</sup> *Id.* at 131.

# EXHIBIT A

Westford Public Schools strives to provide a safe, respectful, and supportive learning environment in which all students can thrive and succeed in its schools. Westford Public Schools does not tolerate discrimination against students, parents, employees, or the general public on the basis of race, color, national origin, sex, sexual orientation, gender identity, pregnancy, pregnancy-related conditions, pregnancy status, disability, homelessness, religion, age, or immigration status.

Understanding the terminology associated with gender identity is important to providing a safe and supportive school environment for students whose rights are protected under the law. The following terms are defined to assist in understanding the guidance presented. Although these are the most commonly used terms, students may prefer other terms to describe their gender identity, appearance, or behavior.

Gender expression: the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.

Gender identity: a person's deeply held sense or psychological knowledge of their own gender, which can include being female, male, another gender, or no gender. Gender identity is an innate and largely inflexible part of a person's identity. One's gender identity can be the same or different than the gender assigned at birth.

Gender nonconforming: a term used to describe people whose gender expression differs from stereotypic expectations.

Gender Dysphoria: a state of distress or unease that can occur when a person's gender identity differs from the sex assigned at birth.

Transgender Person: used to describe a person whose gender identity or gender expression is different from that traditionally associated with the assigned sex at birth.

Transition: the process whereby people usually change from the gender expression associated with their assigned sex at birth to another gender expression that better matches their gender identity. Transition is a process that is different for everyone, and it may or may not involve social, legal, or physical changes.

## STUDENT TRANSITIONS

To maintain privacy regarding a student's transition and gender identity, transgender students may wish— but are not required — to transition over a summer break or between grades. Regardless of the timing of a student's transition, the school shall act in accordance with the following age-appropriate rules.

**ELEMENTARY SCHOOL:** Generally, it will be the parent/guardian/caregiver that informs the school of the impending transition. However, it is not unusual for a student's desire to transition to first surface at school. If school staff believe that a gender identity or

expression issue is presenting itself and creating difficulty for the child at school, approaching parents/guardians/caregivers about the issue is appropriate at the elementary level, after discussion with the student to ensure the prospect of such a conversation with the parent/guardian does not provoke fear in the child. Together, the family and school can then identify appropriate steps to support the student.

**SECONDARY SCHOOL:** notification of a student's parent/guardian/caregiver about their gender identity, expression, or transition may be unnecessary, as they may already be aware and supportive. However, in some cases, notifying parents/guardians/caregivers carries risks for the student. Prior to notification of any parent/guardian/caregiver regarding the transition process, school staff should work closely with the student to assess the degree to which, if any, the parent/guardian/caregiver will be involved in the process and must consider the physical, mental health, well-being, and safety of the transitioning student.

When a student is transitioning or notifies the school of a plan to transition, the school shall offer to meet with the student (and parents/guardians/caregivers if they are involved in the process) to ascertain desires and concerns and to discuss a plan that will create the conditions supporting a safe and accepting environment at the school for the student. This plan may include items such as: the student's chosen name and pronoun; a plan to initiate the use of the student's chosen name and pronoun within school; communication between the school and the parent/guardian/caregiver; name and gender markers in the student record; and the student's right to use restrooms, locker rooms or changing facilities, in accordance with the policy outlined below.

### **PRIVACY**

All persons, including students, have a right to privacy, and this includes the right to keep one's transgender status private at school. Protecting the privacy of transgender and gender nonconforming students must be a top priority for staff. Information about a student's transgender status, legal name, or gender assigned at birth may constitute confidential medical information. Disclosing this information to other students, the student's parents/guardians/caregivers, or other third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act.

Transgender and gender nonconforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information. The fact that a student chooses to disclose their transgender status to staff or other students does not authorize school staff to disclose other medical information about the student. Also, to prevent a breach of confidentiality, unless the student or parent/guardian/caregiver has specified otherwise, school staff should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth when communicating with the parent/guardian/caregiver of a transgender student.

**OFFICIAL RECORDS**

Changes of a student's name and/or gender marker within the student records should be made upon request of the student and/or parent/guardian/caregiver, depending on the student's age/grade, as set out in the student records regulations. 603 CMR 23.01; 603 CMR 23.08. For students under 14 years old, only the parent/guardian/caregiver may request the change. For students who are 14-17 years old, or who have entered ninth grade, the parent/guardian/caregiver and the student may either alone or together make decisions about the student record. Any student 18 years or older who is not under guardianship may make the request. Massachusetts recognizes common law name changes, which means that anyone can use their chosen name for an honest purpose. Therefore, when requested to do so, the school will record the student's chosen name and gender marker on all records, whether or not the student, parent/guardian provides the school with a court order formalizing a name change. If a change is made to the student's name and/or gender marker in the student record, the school should seal all prior records that contain the student's birth name and/or gender in a separate, confidential file.

**NAMES AND PRONOUNS**

Every student has the right to be addressed by a name and pronoun that corresponds to the student's gender identity. A court-ordered name or gender change is not required, and the student need not change his or her official records to be afforded the respect of having school staff use the pronoun requested. Upon request of a name or pronoun change, it is strongly recommended that a trained staff member privately ask the student how they want to be addressed in class, in the school's correspondence to the home, and at conferences with the student's parent/guardian/caregiver. In accordance with the student's desires, the staff member should disseminate the student's chosen name and pronoun to other staff who may be in regular contact with the student and/or the student's home, to ensure the student is appropriately addressed and referred to. As noted above, this conversation about the student's chosen name and pronoun should be part of the initial planning meeting with the student.

**FACILITIES**

With respect to all restrooms, locker rooms, or changing facilities, students shall have access to facilities that correspond to their gender identity. Schools shall allow students to access the restroom, locker room, or changing facilities consistent with their gender identity and support the student through that process.

In any gender segregated facility, any student who is uncomfortable using a shared facility, regardless of the reason, shall, upon the student's request, be provided with a safe and non-stigmatizing alternative. This may include, for example, the addition of a privacy partition or curtain, provision to use a nearby private restroom or office, or a separate changing schedule. However, requiring a transgender or gender nonconforming student to use a separate, nonintegrated space threatens to publicly identify and marginalize the student as transgender and

should not be done. Under no circumstances may students be required to use sex segregated facilities that are inconsistent with their gender identity.

Where available, schools are encouraged to designate facilities designed for use by one person at a time as accessible to all students regardless of gender and to incorporate such single-user facilities into new construction or renovation. However, under no circumstances may a student be required to use such facilities because they are transgender or gender nonconforming.

### **PHYSICAL EDUCATION CLASSES AND INTRAMURAL AND INTERSCHOLASTIC ATHLETICS**

All students shall be permitted to participate in physical education classes and intramural sports in a manner consistent with their gender identity. Furthermore, unless precluded by state interscholastic association policies, all students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity.

### **OTHER GENDER-BASED ACTIVITIES, RULES, POLICIES, AND PRACTICES**

As a general matter, schools should evaluate all gender-based activities, rules, policies, and practices—including but not limited to classroom activities, extra-curricular activities, school ceremonies, school photos, and documentation requests, such as field trip permission forms, and maintain only those that have a clear and sound pedagogical purpose and do not violate anti-discrimination law. Students shall be permitted to participate in any such activities or conform to any such rule, policy, or practice consistent with their gender identity.

### **DRESS CODE**

Schools may enforce dress codes pursuant to district policy. Students shall have the right to dress in accordance with their gender identity, within the constraints of the dress codes adopted by the school. School staff shall not enforce a school's dress code more strictly against transgender and gender nonconforming students than other students.

### **PROFESSIONAL DEVELOPMENT**

The administration shall conduct training for all staff members on their responsibilities under applicable laws and this policy, including teachers, administrators, counselors, social workers, and health staff. Information regarding this policy shall be incorporated into training for new school employees. The administration shall implement ongoing professional development to build the skills of all staff members to prevent, identify, and respond to bullying, harassment, and discrimination that may result from gender identity issues.

The content of such professional development shall include, but not be limited to:

1. terms, concepts, and current developmental understandings of gender identity, gender expression, and gender diversity in children and adolescents;
2. developmentally appropriate strategies for communication with students and parents/guardians/caregivers about issues related to gender identity and gender

expression that protect student privacy and safety;

**Massachusetts General Law References:**

Massachusetts General Law 4:7 – Definitions of Statutory Terms

Massachusetts General Law 76:5 – School Attendance: Discrimination

**Westford Public Schools Policy References:**

**Other References:**

603 CMR 26.00 – Access to Equal Education Regulations

Massachusetts Department of Elementary and Secondary Education, Guidance for Massachusetts Public Schools: Creating a Safe and Supporting School Environment – Nondiscrimination on the Basis of Gender Identity