



April 7, 2026

Via Email

The Honorable Harmeet Dhillon
Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave, NW
Washington, DC 20530

Mr. Frank E. Miller Jr.
Director, Chief Privacy Officer
U.S. Department of Education
Student Privacy Policy Office
400 Maryland Avenue, SW
Washington, DC 20202

**Re: First Amendment, Fourteenth Amendment, and FERPA Complaint
Against Montgomery County Public Schools (Rockville, MD)**

Dear Assistant Attorney General Dhillon and Director Miller:

America First Legal Foundation (“AFL”) is a national nonprofit organization dedicated to upholding the rule of law and defending the constitutional rights of all Americans. In furtherance of this mission, AFL undertakes strategic litigation and oversight initiatives aimed at improving education in schools across the nation.

AFL submits this complaint to alert the U.S. Department of Justice and the U.S. Department of Education (collectively “the Departments”) about ongoing policies and practices at Montgomery County Public Schools (“MCPS”) that violate the Family Educational Rights and Privacy Act¹ (“FERPA”), as well as the First and Fourteenth Amendments to the U.S. Constitution. MCPS claims that FERPA requires concealing student records from parents. This gets FERPA exactly backward. FERPA restricts disclosure to third parties, but parents are FERPA’s primary rights holders, not third parties. As such, AFL requests that the Departments investigate MCPS and take appropriate remedial action.

I. MCPS directs staff to withhold gender identity and gender transition information from parents.

¹ 20 U.S.C. § 1232g.

Public education in Montgomery County, Maryland, is provided by MCPS, one of the largest school districts in the country.² The district is managed by the Montgomery County Board of Education, a policymaking body consisting of seven elected county residents and one student representative.³

MCPS maintains a publicly available handbook titled “Gender Identity in Montgomery County Public Schools” (“Handbook”), which sets forth policies regarding students who identify as “transgender” or “gender nonconforming.”⁴ The Handbook defines “transgender” as “a person whose gender identity or expression is different from that traditionally associated with the person’s sex assigned at birth,” and defines “gender nonconforming” as “individuals whose gender expression differs from conventional or stereotypical expectations,” which “includes people who identify outside traditional gender categories or identify as two or more genders.”⁵

The Handbook repeatedly instructs staff to condition parental involvement on whether the parent is deemed “supportive” of their child’s gender identity. For example, under the “Gender Support Plan” section, MCPS directs that the principal or designee, “in collaboration with the student and the student’s family (if the family is supportive of the student), should develop a plan” to ensure equal access and participation in school programs.⁶ The policy thus contemplates parental participation only when the school has determined that the parent’s views on gender identity are acceptable.

Under “Communication with Families,” the Handbook further instructs that “[p]rior to contacting a student’s parent/guardian, the principal or identified staff member should speak with the student to ascertain the level of support the student either receives or anticipates receiving from home.”⁷ Where a family is deemed unsupportive, staff are directed to develop a “student-led plan” that may include gradual family inclusion “if possible,” while accounting for “safety concerns” and “student privacy.”⁸

The Handbook also establishes confidentiality rules that restrict disclosure of a student’s gender identity to parents. Under the heading “Privacy and Disclosure of Information,” the Handbook states that “[i]nformation about a student’s transgender status, legal name, or sex assigned at birth may constitute confidential medical

² NAT’L CTR. FOR EDUC. STATS., DIGEST OF EDUCATION STATISTICS, ENROLLMENT, POVERTY, AND FEDERAL FUNDS FOR THE 120 LARGEST SCHOOL DISTRICTS, BY ENROLLMENT SIZE IN 2021: SCHOOL YEAR 2019-20 AND FISCAL YEAR 2022 (2022), <https://perma.cc/T4F6-E69G>.

³ See MD. EDUC. CODE ANN. § 3–901(b).

⁴ MONTGOMERY CNTY. PUB. SCHS., GENDER IDENTITY IN MONTGOMERY COUNTY PUBLIC SCHOOLS (2025-2026) 1 [hereinafter MCPS HANDBOOK], <https://perma.cc/WML6-RRQC>.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.*

information” and warns that “[d]isclosing this information to other students, their parents/guardians, or third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (FERPA).”⁹ It further provides that even when a student voluntarily discloses their transgender status to school staff, this disclosure “does not authorize school staff members to disclose a student’s status to others, *including parents/guardians* and other school staff members, unless legally required to do so or unless students have authorized such disclosure.”¹⁰

The Handbook requires the principal or other designee to use MCPS Form 560-80, titled “Intake Form: Supporting Students, Gender Identity,” (“Intake Form”) when assisting with the development of a “Gender Support Plan.”¹¹ The Intake Form states that the form must be maintained in a secure location and, in bold text, directs that the form “is not to be kept in the student’s cumulative or confidential folders.”¹² MCPS does not explain this directive, but the only apparent purpose is to prevent the form from being placed in records that parents are entitled to access under FERPA.

In other sections, the Handbook directs staff to actively conceal a student’s gender transition from parents. Under the heading “Staff Communication,” the Handbook instructs that “[u]nless the student or parent/guardian has specified otherwise, when contacting the parent/guardian of a transgender student, MCPS school staff members should use the student’s legal name and pronoun that correspond to the student’s sex assigned at birth.”¹³ In practice, this policy requires school staff to present one identity to parents while facilitating another at school, effectively directing them to deceive parents about their own children.

The Handbook further provides that students may use names and pronouns inconsistent with their biological sex without any parental involvement. Under the heading “Names/Pronouns,” the Handbook states that “[a]ll students have the right to be referred to by their identified name and/or pronoun” and that “[s]tudents are not required to change their permanent student records . . . as a prerequisite to being addressed by the name and pronoun that corresponds to their identified name.”¹⁴ Similarly, under the heading “Permanent School Records,” the Handbook provides that “[s]elf-identification of a student’s gender is sufficient for the student’s permanent record” and that “[t]he school must protect the student’s previous identity once a change to a student’s gender and/or legal name has occurred.”¹⁵

⁹ *Id.*

¹⁰ MCPS HANDBOOK, *supra* note 4, at 3 (emphasis added).

¹¹ *Id.*

¹² MONTGOMERY CNTY. PUB. SCHS., MCPS FORM 560-80: INTAKE FORM: SUPPORTING STUDENT GENDER IDENTITY (2025) [hereinafter INTAKE FORM], <http://perma.cc/XDX6-WQXV>.

¹³ MCPS HANDBOOK, *supra* note 4, at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 3–4.

The Handbook also extends these policies to physical facilities and school activities. Under the heading “Gender-separated Areas,” the Handbook provides that “students must be provided access to gender-specific facilities (e.g., bathrooms, locker rooms, and changing rooms) in alignment with their gender identity consistently asserted at school” and that “[s]tudents who are entitled to use a facility consistent with their gender identity *cannot* be required to use an alternative arrangement.”¹⁶ Under the heading “Outdoor Education/Overnight Field Trips,” the Handbook provides that a “student’s transgender status is confidential information and school staff members may not disclose or require disclosure of a student’s transgender status to other students or their parents/guardians, as it relates to a field trip, without the consent of the student and/or the student’s parent/guardian.”¹⁷

Taken together, these policies establish a comprehensive framework in which MCPS officials facilitate a student’s social gender transition at school—including changes to name, pronouns, school records, facility access, and overnight sleeping arrangements—while systematically concealing these actions from parents whom the school deems insufficiently “supportive.” The policies thus sever the parent-child relationship with respect to fundamental questions of identity, health, and well-being. These practices conflict with Executive Order 14168 and Attorney General guidance, which recognizes only two biological sexes, designates intimate spaces by sex, and bars federal funding for gender ideology promotion.¹⁸

II. MCPS’s Policies Violate FERPA.

FERPA guarantees parents the right to inspect and review all “education records” maintained by an educational agency or institution that receives federal funds.¹⁹ An “education record” includes any materials that are directly related to a student and maintained by the school or by a party acting on behalf of the school.²⁰

A school district violates FERPA when it adopts policies or practices that deny or effectively frustrate parents’ statutory right of access to education records.²¹ Unlawful practices include maintaining records that are used to make decisions about a student while deliberately excluding those records from parent-accessible files or otherwise concealing their existence. Records need not be formally labeled or placed in a cumulative file to qualify as education records; if they are maintained by the district and used to manage the student’s school experience, they fall within FERPA’s scope.

¹⁶ *Id.* at 4 (emphasis added).

¹⁷ *Id.* at 5.

¹⁸ Exec. Order No. 14168, 90 Fed. Reg. 8615, 8615 (Jan. 30, 2025); U.S. Att’y Gen. Pam Bondi, *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination*, OFF. OF THE ATTY GEN 6 (Jul. 29, 2025), <https://perma.cc/CNB4-KWLT>.

¹⁹ 20 U.S.C. § 1232g(a)(1)(A).

²⁰ *Id.* § 1232g(a)(4)(A); 34 C.F.R. § 99.3.

²¹ *See* 34 C.F.R. § 99.10.

The Handbook and the associated Intake Form describe the creation and maintenance of records that clearly constitute “education records” under FERPA. The Intake Form is a student-specific record documenting the student’s identified name, gender, pronouns, accommodations for facilities and activities, a communication plan, safety protocols, and staff-disclosure decisions used by school personnel to manage the student’s daily school experience.²² The Handbook directs that this form and the associated gender support plan be “consistently implemented by all school staff,” confirming that the information is operationally central to how the district manages the student’s education.²³

The Handbook and the Intake Form together establish a comprehensive system for managing a student’s social gender transition at school.²⁴ These documents direct staff to (1) develop individualized gender support plans documenting a student’s identified name, pronouns, gender, and accommodations for bathrooms, locker rooms, sports, and extracurricular activities; (2) maintain those records in a secure, confidential location separate from the student’s cumulative or confidential files; and (3) withhold gender transition information from parents unless the student authorizes disclosure.²⁵

The Handbook characterizes a student’s transgender status, legal name, and sex assigned at birth as “confidential medical information” and asserts that disclosing this information to parents or third parties “may violate privacy laws, such as [FERPA].”²⁶ But the Handbook inverts FERPA’s requirements: while FERPA guarantees parents the right to access education records, the Handbook invokes FERPA as a basis for withholding records from parents. FERPA restricts unauthorized *disclosure to third parties*, but it affirmatively guarantees *access for parents*. Parents are not third parties under FERPA; instead, they are the primary rights-holders.

The Handbook further provides that school staff may not “disclose a student’s status to others, including parents/guardians and other school staff members, unless legally required to do so or unless students have authorized such disclosure.”²⁷ Staff are instructed that when contacting parents of a transgender student, they should default to using the student’s legal name and birth-assigned pronouns—effectively

²² See MCPS HANDBOOK, *supra* note 4, at 3–4; INTAKE FORM, *supra* note 12, at 1–2.

²³ MCPS HANDBOOK, *supra* note 4, at 3.

²⁴ *Id.*; INTAKE FORM, *supra* note 12.

²⁵ See MCPS HANDBOOK, *supra* note 4, at 3; INTAKE FORM, *supra* note 12, at 1.

²⁶ MCPS HANDBOOK, *supra* note 4, at 3. (“Information about a student’s transgender status, legal name, or sex assigned at birth may constitute confidential medical information. Disclosing this information to other students, their parents/guardians, or third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (FERPA).”).

²⁷ *Id.*

presenting a version of the student’s school experience that omits material facts about how the student is actually known and treated at school.²⁸

The Intake Form operationalizes this concealment system. The Intake Form collects detailed, student-specific information, including the student’s identified name, identified gender, pronouns, and specific plans for bathroom and locker room use, sports participation, and other school activities.²⁹ It further documents a communication plan that identifies which staff members may access the information and specifies whether the student’s gender identity will be public or private.³⁰ The Handbook mandates that the completed form “must be maintained in a secure location and may not be placed in the student’s cumulative or confidential files,” and that “the form itself is not intended to be used or accessed by other school staff members”—even though the plan “should be consistently implemented by all school staff.”³¹ The Intake Form’s distribution instructions confirm this restricted-access regime: one copy is filed in a “School Confidential folder (in principal’s office)” and a second is transmitted to the Department of Student Conduct and Appeals “in an envelope marked confidential.”³²

The Handbook also establishes a two-track naming system. A detailed chart in the Handbook and the Intake Form specifies that the student’s “identified name” (rather than legal name) will appear on attendance calls, class rosters provided to substitutes, report cards, and certain testing reports, while the student’s legal name is reserved for official documents such as transcripts, IEPs, and standardized test administrations.³³ This practice ensures that the identity under which the student operates on a daily basis at school—used by teachers, substitutes, and administrators in routine interactions—diverges from the identity reflected in the records available to parents.

Critically, the Intake Form explicitly asks whether the student’s parent or guardian is “aware of . . . the student’s gender identity,” rates the level of parental support on a numerical scale, and asks what “considerations must be accounted for” if parental support is lacking.³⁴ The Handbook provides that where a student’s family is “nonsupportive,” staff should nonetheless “support the development of a student-led plan that works toward inclusion of the family, if possible, taking safety concerns into consideration as well as student privacy.”³⁵

²⁸ *Id.* (“[W]hen contacting the parent/guardian of a transgender student, MCPS school staff members should use the student’s legal name and pronoun that correspond to the student’s sex assigned at birth.”).

²⁹ *See* INTAKE FORM, *supra* note 12, at 1.

³⁰ *See id.* at 1–2.

³¹ MCPS HANDBOOK, *supra* note 4, at 3.

³² INTAKE FORM, *supra* note 12, at 2.

³³ MCPS HANDBOOK, *supra* note 4, at 3; INTAKE FORM, *supra* note 12, at 1.

³⁴ INTAKE FORM, *supra* note 12, at 1.

³⁵ MCPS HANDBOOK, *supra* note 4, at 3.

Read together, these provisions establish a system in which school staff assesses whether parents are aware of and supportive of a child’s gender transition, and where parental awareness or support is lacking, staff proceeds to implement the transition at school while managing whether and when to inform parents—all without parental knowledge or consent.

FERPA does not permit a school district to evade parental access by maintaining parallel or “internal” record systems that document a student’s educational experience while withholding those records from parents. By housing the Intake Form in the principal’s confidential folder rather than in the student’s cumulative record, and by directing staff to conceal the student’s transition status from parents unless the student consents, MCPS has constructed a system that effectively denies parents their statutory right to inspect and review education records relating to their child. The Handbook’s instruction to use the student’s legal name and birth-assigned pronouns when communicating with parents, while simultaneously using the student’s identified name and pronouns in all operational school contexts, further ensures that parents will receive an incomplete and misleading picture of their child’s school experience. This two-track communication system is precisely the kind of concealment that FERPA forbids.

III. MCPS’s Policies Violate the Right to Free Exercise.

The Free Exercise Clause of the U.S. Constitution provides that “Congress shall make no law . . . prohibiting the free exercise [of religion].”³⁶ That restriction applies to the States by way of the Fourteenth Amendment.³⁷

At its core, the Free Exercise Clause “protects ‘the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance’ of religious acts.”³⁸ The “right to free exercise, like other First Amendment rights, is not ‘shed . . . at the schoolhouse gate.’”³⁹ “Government schools, like all government institutions, may not place unconstitutional burdens on religious exercise.”⁴⁰

The Supreme Court has made clear that a rule impinging on parents’ rights to control the religious upbringing and education of their minor children triggers strict scrutiny under the Free Exercise Clause.⁴¹ To satisfy strict scrutiny, a policy must be “justified by a compelling state interest” and “narrowly tailored in pursuit of that interest.”⁴²

³⁶ U.S. CONST. amend I.

³⁷ *Mahmoud v. Taylor*, 606 U.S. 522, 545 (2025).

³⁸ *Id.* at 546 (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022)).

³⁹ *Id.* (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506–07 (1969)).

⁴⁰ *Id.*

⁴¹ *Wisconsin v. Yoder*, 406 U.S. 205, 231 (1972).

⁴² *Mahmoud*, 606 U.S. at 564.

In *Mirabelli v. Bonta*, a group of parents brought a Free Exercise challenge to California school policies that prohibit disclosure to parents of a student’s gender transition without the student’s consent.⁴³ The Supreme Court determined that the parents were likely to succeed on the merits of their free-exercise claim.⁴⁴

The Court explained that the challenged policies were unlikely to survive strict scrutiny because they “cut out the primary protectors of children’s best interests: their parents.”⁴⁵ The Court further explained that the policy fails the narrow-tailoring requirement, as any compelling interests could be achieved through less restrictive means, such as a policy that “allows religious exemptions while precluding gender-identity disclosure to parents who would engage in abuse.”⁴⁶

Like policies at issue in *Mirabelli*, MCPS’s policies prohibit school staff from disclosing a student’s gender transition to the student’s parents without the student’s consent. The Handbook expressly provides that a student’s voluntary disclosure of transgender status to school staff “does not authorize school staff members to disclose a student’s status to others, including parents/guardians.”⁴⁷ Moreover, the Handbook conditions parental involvement on the school’s assessment of whether the family is “supportive,” and, if deemed unsupportive, directs staff to develop a “student-led plan” that merely “works toward inclusion of the family, if possible.”⁴⁸

MCPS’s policies are functionally indistinguishable from those that the Court doubted in *Mirabelli*. They cut parents out of critical decisions about their children’s identity and well-being based on the school’s assessment of the parents’ viewpoint. Under *Mirabelli*, these policies are subject to strict scrutiny and are unlikely to survive, as the State’s interests can be achieved through less restrictive means that do not categorically exclude parents from their children’s lives.

MCPS’s policies also infringe upon the free-exercise rights of parents who object to their children sharing private facilities with members of the opposite sex. MCPS’s Handbook states that “[a]ny student who is uncomfortable using a shared facility because of safety, privacy, or any other reason, should, upon request, be provided with a safe and nonstigmatizing alternative arrangement” and that “[s]tudents who are entitled to use a facility consistent with their gender identity cannot be required to use an alternative arrangement.”⁴⁹ The Handbook also directs that “[s]ome students may feel uncomfortable with a transgender student using the same sex-specific

⁴³ 146 S. Ct. 797, 800 (2026) (per curiam).

⁴⁴ *Id.* at 802.

⁴⁵ *Id.*

⁴⁶ *Id.* at 802–03.

⁴⁷ MCPS HANDBOOK, *supra* note 4, at 3.

⁴⁸ *Id.*

⁴⁹ *Id.*

facility,” but “[t]his discomfort is not a reason to deny access to the transgender student.”⁵⁰

This policy undoubtedly requires students to share restrooms and other private facilities with members of the opposite sex, even when doing so conflicts with their families’ sincerely held religious beliefs. By conditioning students’ full and equal participation in school life on their willingness to forgo those beliefs—or else accept segregated alternative arrangements—the policy places a substantial burden on religious exercise. And because it elevates the interests of some students while offering objecting families no comparable accommodation, it raises serious concerns under the Free Exercise Clause.

IV. MCPS’s Policies Violate the Right to Free Speech.

The Free Speech Clause of the U.S. Constitution provides that “Congress shall make no law . . . abridging the freedom of speech.”⁵¹ That restriction applies to the States by way of the Fourteenth Amendment.⁵²

This constitutional guarantee safeguards the “freedom to think as you will and speak as you think.”⁵³ It follows that the “government may not regulate speech based on its substantive content or the message it conveys.”⁵⁴ For example, with respect to private speech or expression, “government regulation may not favor one speaker over another.”⁵⁵ “When the government targets . . . particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.”⁵⁶ “Viewpoint discrimination is thus an egregious form of content discrimination.”⁵⁷

In the context of asserting First Amendment rights in a pre-enforcement challenge, so long as the necessary actors have “laid the groundwork,” standing exists even though those actors “ha[ve] yet to carry out [their] plans.”⁵⁸ It is enough that they worry that the relevant government actor “will force [them] to express views with which [they] disagree.”⁵⁹

⁵⁰ *Id.* at 5.

⁵¹ U.S. CONST. amend. I.

⁵² *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

⁵³ *303 Creative LLC v. Elenis*, 600 U.S. 570, 584 (2023) (quoting *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660–61 (2000)).

⁵⁴ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

⁵⁵ *Id.*

⁵⁶ *Id.* at 829.

⁵⁷ *Id.*

⁵⁸ *303 Creative LLC*, 600 U.S. at 580.

⁵⁹ *Id.*; see also *Laird v. Tatum*, 408 U.S. 1, 14 (1972) (noting that pre-enforcement standing is satisfied in the free speech context by claiming “a threat of specific future harm”).

The Handbook directs school officials to involve parents in the “Gender Support Plan” only insofar as “the family is supportive of the student.”⁶⁰ Parents who affirm a child’s asserted gender identity are granted full participation in the development of a Gender Support Plan; parents who hold differing views—whether based on religious conviction, medical judgment, or other grounds—are excluded. Under any standard of review, a government policy that conditions parental access to information about a child on whether the parent holds the government’s preferred viewpoint violates the Free Speech Clause.

V. MCPS’s Policies Violate the Due Process Clause.

The Due Process Clause of the Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law.”⁶¹

A. Substantive Due Process

This constitutional guarantee protects certain substantive rights that are “deeply rooted in this Nation’s history and tradition,” and are therefore “fundamental to our scheme of ordered liberty.”⁶² Among these fundamental rights is a parent’s right to direct the upbringing of their child.⁶³ The Supreme Court has made clear that “parents—not the State—have primary authority with respect to ‘the upbringing and education of children.’”⁶⁴ “The right protected by these precedents includes the right not to be shut out of participation in decisions regarding their children’s mental health.”⁶⁵ “Gender dysphoria is a condition that has an important bearing on a child’s mental health, but when a child exhibits symptoms of gender dysphoria at school, California’s policies conceal that information from parents and facilitate a degree of gender transitioning during school hours.”⁶⁶

Because the “right to rear children without undue governmental interference is a fundamental component of due process,” laws that burden that right are subject to strict scrutiny, whereby the Fourteenth Amendment “forbids the government to infringe certain fundamental liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling government interest.”⁶⁷

⁶⁰ MCPS HANDBOOK, *supra* note 4, at 2.

⁶¹ U.S. CONST. amend. XIV, § 1.

⁶² *McDonald v. City of Chi.*, 561 U.S. 742, 767 (2010) (internal quotation marks and emphasis omitted).

⁶³ *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925); *see also Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion) (discussing a long line of cases where the Supreme Court has “recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children”).

⁶⁴ *Mirabelli*, 146 S. Ct. at 803 (quoting *Pierce v. Soc’y of Sisters*, 268 U.S. at 534–35).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Nunez v. City of San Diego*, 114 F.3d 935, 951 (9th Cir. 1997).

MCPS’s Handbook systematically deprives parents of their fundamental right to direct the upbringing of their children. The policies instruct school officials to facilitate a child’s social gender transition—including changes to name, pronouns, official school records, facility access, and overnight sleeping arrangements—without parental notice or consent, and in many cases while actively concealing these actions from parents. The Handbook directs staff to “speak with the student to ascertain the level of support the student either receives or anticipates receiving from home” before contacting parents, and where the school concludes that the parent may not be supportive, to proceed without parental involvement.⁶⁸

As the Supreme Court recognized in *Mirabelli*, policies that “cut out the primary protectors of children’s best interests: their parents” cannot survive constitutional scrutiny.⁶⁹ MCPS’s policies deprive parents of notice, an opportunity to be heard, and any meaningful role in decisions that profoundly affect their children’s health, identity, and welfare in direct violation of the Due Process Clause.

B. Procedural Due Process

The Due Process Clause also guarantees that the government may not deprive a person of a protected liberty interest without adequate procedural safeguards. At a minimum, due process requires notice and a meaningful opportunity to be heard before the government acts to curtail a protected interest.⁷⁰ Where, as here, a parent holds a fundamental liberty interest in directing the upbringing of his or her child, the government may not take actions that effectively override parental authority without first providing the parent with notice of what is occurring and an opportunity to participate.

MCPS’s policies provide neither. A parent whose child initiates a social gender transition at school receives no notice that these changes are taking place, no opportunity to object or provide input, and no mechanism to appeal the school’s unilateral decision to proceed without parental involvement. To the contrary, the Handbook affirmatively directs staff to conceal these actions from parents whom the school deems insufficiently supportive. A government policy that substitutes a school administrator’s assessment of parental fitness for any procedural protection whatsoever cannot satisfy the requirements of the Due Process Clause.

MCPS’s policies also infringe upon the due-process rights of parents who object to their children sharing private facilities with members of the opposite sex. MCPS’s Handbook states that “[a]ny student who is uncomfortable using a shared facility because of safety, privacy, or any other reason, should, upon request, be provided with

⁶⁸ MCPS HANDBOOK, *supra* note 4, at 3.

⁶⁹ *Mirabelli*, 146 S. Ct. at 802.

⁷⁰ *Matthews v. Eldridge*, 424 U.S. 319, 348 (1976).

a safe and nonstigmatizing alternative arrangement” and that “[s]tudents who are entitled to use a facility consistent with their gender identity cannot be required to use an alternative arrangement.”⁷¹ Alternative arrangements “should be used only at the request of a student and in a manner that keeps the student’s transgender status confidential.”⁷² The Handbook also directs that “[s]ome students may feel uncomfortable with a transgender student using the same sex-specific facility,” but “[t]his discomfort is not a reason to deny access to the transgender student.”⁷³

This policy undoubtedly denies parents any meaningful opportunity to object to the practice of requiring their child to share a restroom or locker room with members of the opposite sex. The policy thus fails to comply with the mandates of the Due Process Clause.

VI. MCPS’s Policies Violate the Equal Protection Clause.

The Equal Protection Clause of the Fourteenth Amendment provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”⁷⁴ This guarantee is “essentially a direction that all persons similarly situated should be treated alike.”⁷⁵ “Under both the Due Process and Equal Protection Clauses, interference with a fundamental right warrants the application of strict scrutiny.”⁷⁶

The Handbook directs school officials to involve a student’s family in the creation of a “Gender Support Plan” only “if the family is supportive of the student.”⁷⁷ Parents who affirm a child’s asserted gender identity are granted full participation in the development of a Gender Support Plan; parents who hold differing views—whether based on religious conviction, medical judgment, or other grounds—are excluded.

Under any standard of review, a government policy that conditions parental access to information about a child on whether the parent holds the government’s preferred viewpoint violates the Equal Protection Clause. By granting full participation rights to parents who affirm a student’s asserted gender identity while categorically excluding those who do not, the policy draws an explicit line based on viewpoint and belief. That kind of differential treatment is not neutral; it penalizes disfavored perspectives and rewards ideological conformity. The Equal Protection Clause does not permit the government to distribute parental rights in this manner, particularly where the distinction burdens fundamental interests in the care, custody, and upbringing of one’s child. Nor is there any sufficient justification for such one-sided

⁷¹ MCPS Handbook, *supra* note 4, at 4.

⁷² *Id.* at 4–5.

⁷³ *Id.* at 5.

⁷⁴ U.S. CONST. amend. XIV, § 1.

⁷⁵ *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

⁷⁶ *Bostic v. Schaefer*, 760 F.3d 352, 375 (4th Cir. 2014).

⁷⁷ MCPS HANDBOOK, *supra* note 4, at 2–3.

exclusion, which is not narrowly tailored to serve a compelling interest and instead operates as a blunt instrument to sideline dissenting parents.

VII. Conclusion

The Department of Justice's Civil Rights Division is responsible for enforcing all federal civil rights laws and investigating reports or complaints of public officials with respect to matters affecting civil rights. The Department of Education's Student Privacy Policy Office is responsible for investigating and enforcing complaints relating to FERPA.

For the foregoing reasons, AFL respectfully requests that the Departments promptly investigate MCPS for violations of FERPA and the First and Fourteenth Amendments of the U.S. Constitution. AFL further requests that the Departments:

1. Determine that MCPS's policy of withholding student transition information from parents violates FERPA's access requirements;
2. Require MCPS to rescind or revise any policies that direct staff to conceal material student information from parents;
3. Mandate corrective action to ensure that all education records relating to a student's identity, name, pronouns, and social transition are fully accessible to parents in compliance with federal law;
4. Require MCPS to adopt and implement training for all staff on MCPS compliance and the constitutional rights of parents; and
5. Impose any additional remedial measures, including enforcement proceedings and withdrawing federal funds, that the Departments deem appropriate.

Thank you for your attention to this critical matter.

/s/ Alice Kass
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Enclosure: Gender Identity in Montgomery County Public Schools (2025–2026)