



State of West Virginia
Office of the Attorney General
John B. McCuskey
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The Honorable Harmeet Dhillon
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U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave, NW
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Mr. Frank E. Miller Jr.
Director, Chief Privacy Officer
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Student Privacy Policy Office
400 Maryland Avenue, SW
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Dear Assistant Attorney General Dhillon and Director Miller:

We write in support of America First Legal Foundation’s complaint against Montgomery County Public Schools. These schools push students’ social gender transition without parental consent and mandate that staff conceal those transitions from parents anytime they are deemed insufficiently supportive. Unfortunately, Montgomery County is not alone in adopting these strategies.

When schools cut parents out of critical medical decisions, they harm students. These policies also violate parents’ constitutional rights to free exercise, free speech, and due process. We thus join AFL in urging the Departments to investigate MCPS’s violations. That investigation—and any ultimate action—would send an important message that such damaging policies cannot and will not be tolerated. This national problem deserves a strong response.

I. MCPS’s secret transition policies put students’ health, safety, and wellbeing at risk.

Although MCPS treats social transitioning as proven science, it’s not. Social transitioning of children is a new and poorly understood intervention. The “small volume and low quality of

research” makes it “difficult to assess the impact of social transition on children [and] adolescents.”¹ And “[s]ignificant evidence gaps remain in the evaluation of social transition as an intervention for children and adolescents with [gender dysphoria].”²

But rapid adoption of gender-transition practices in some quarters is racing ahead of the established science. Even a decade ago, it was rare for children to express gender noncongruence.³ Yet in recent years, the nation has seen a “sharp and poorly understood rise in the number of young people presenting with gender dysphoria or claiming a transgender identity.”⁴ Social factors and cultural influences have likely played a role in this increase. Evidence shows that it “could be driven by prevalent maladaptive coping mechanisms together with sociocultural factors and peer influences.”⁵ This number continues to rapidly rise: the number of youth ages 13-17 identifying as transgender nearly doubled between 2017 and 2023.⁶

It’s becoming increasingly obvious that these transitions can cause serious harm to children. One recent peer-reviewed study, for example, noted how “gender-affirming” care (including medical intervention) “carr[ies] risk of significant harms including infertility/sterility, sexual dysfunction, impaired bone density accrual, adverse cognitive impacts, cardiovascular disease and metabolic disorders, psychiatric disorders, surgical complications, and regret.”⁷ And “those who had socially transitioned at an earlier age and/or prior to being seen in clinic were more likely to proceed to a medical pathway.”⁸ Ultimately, “results favor[ed] cisgender children, *even when* the transgender children *had* high levels of parental support for their gender transitioning.”⁹

What’s also clear is that childhood gender noncongruence is seldom permanent; depending on the study, somewhere between 2% to 27% of those who experienced gender dysphoria during childhood will continue to report gender dysphoria and perhaps “seek services for gender reassignment later in life.”¹⁰ That shift makes sense. No specialized scientific knowledge is necessary to appreciate that “a young person’s identity can be fluid and evolve over time in

¹ Ruth Hall et al., *Impact of social transition in relation to gender for children and adolescents: a systematic review*, ARCH. DIS. CHILD., Nov. 2024 Suppl. 2, at s12, <https://perma.cc/L3EA-WNNC>.

² U.S. DEP’T OF HEALTH & HUMAN SERVS., TREATMENT FOR PEDIATRIC GENDER DYSPHORIA REVIEW OF EVIDENCE AND BEST PRACTICES 89 (2025), <https://perma.cc/K34B-BM49>.

³ James R. Rae et al., *Predicting Early-Childhood Gender Transitions*, 30 PSYCHOL. SCI. 669, 669-70 (2019), <https://bit.ly/4mRbSDr>.

⁴ Sarah C.J. Jorgensen, *Transition Regret and Detransition: Meanings and Uncertainties*, 52 ARCH. SEX. BEHAV. 2173, 2174 (2023), <https://perma.cc/TG4K-F7HG>.

⁵ *Id.*

⁶ JODY L. HERMAN & ANDREW R. FLORES, WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 5 (2025), <https://perma.cc/8B38-5HYE>.

⁷ U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 2, at 10.

⁸ H. CASS, INDEPENDENT REVIEW OF GENDER IDENTITY SERVICES FOR CHILDREN AND YOUNG PEOPLE: FINAL REPORT 31 (2024), <https://bit.ly/4cBzPeL>.

⁹ Walter R. Schumm & Duane W. Crawford, *Is Research on Transgender Children What It Seems? Comments on Recent Research on Transgender Children with High Levels of Parental Support*, 87 LINACRE Q. 9, 21 (2019), <https://bit.ly/3R5zIPW>.

¹⁰ Thomas D. Steensma et al., *Factors Associated With Desistence and Persistence of Childhood Gender Dysphoria: A Quantitative Follow-Up Study*, 52 J. AM. ACAD. CHILD ADOLESC. PSYCHIATRY 582 (2013), <https://perma.cc/Z2LE-98VJ>.

response to biological, psychological, and social factors.”¹¹ And “no standardized protocol or measure” exists “to help families or clinicians decide which children to support through a transition.”¹² Even many proponents have expressed concerns that “social transition may affect the likelihood that a child’s or adolescent’s experience of gender incongruence will persist.”¹³

Despite the known and unknown risks, MCPS vests these decisions solely with the student and a school staff member. A student’s self-identification is all that is needed for the school to begin assisting (and hiding) that student’s social gender transition; “[s]elf-identification of a student’s gender is sufficient for the student’s permanent record.”¹⁴ Neither parental nor clinical support is required for students to receive gender-transition services at school.

Cutting parents out of the process prevents students from accessing critical parental and clinical support. That’s disconcerting, especially given these students face unique vulnerabilities. In and of itself, “[g]ender dysphoria is a condition that has an important bearing on a child’s mental health.”¹⁵ Children who experience gender confusion or dysphoria are also more likely than their peers to have a mental illness, to suffer from depression and anxiety, to be on the autism spectrum, and to have other neurodevelopmental disabilities.¹⁶ And as MCPS’s policy handbook acknowledges, “LGBTQIA+ students have a higher incidence of being bullied, harassed, or intimidated as well as a higher rate of suicide contemplation, and are more than five times as likely as non-LGBTQIA+ students to attempt suicide.”¹⁷

Parental involvement and support are critical for these students. So too is clinical support. But the MCPS policy requires neither. Dr. Erica Anderson—a transgender clinical psychologist with forty-five years of experience—succinctly summed this conundrum up: Schools “cannot provide professional assistance for children dealing with these issues, and parents cannot obtain it either for their child if they are kept in the dark.”¹⁸

Practical experience shows the damage that’s done when parents are kept out of the loop; families have faced tragic consequences because of similar policies. Dylan Parke, a nineteen-year-old from California, committed suicide several years after his Los Angeles school began socially transitioning him without his parents’ knowledge.¹⁹ An eighth-grader in California attempted

¹¹ Jorgensen, *supra* note 4, at 2176.

¹² Rae, *supra* note 3, at 669-70.

¹³ Brief for Dr. Erica E. Anderson as Amicus Curiae Supporting Petitioners at 8, *Littlejohn v. Sch. Bd. of Leon Cnty., Fl.*, No. 25-259, 2026 WL 1127219 (U.S. Apr. 27, 2026).

¹⁴ MONTGOMERY CNTY. PUB. SCHS., GENDER IDENTITY IN MONTGOMERY COUNTY PUBLIC SCHOOLS 2025-2026 4 (2025), <https://perma.cc/2YQT-DVMP>.

¹⁵ *Mirabelli v. Bonta*, 146 S. Ct. 797, 803 (2026).

¹⁶ Varun Warriar et al., *Elevated rates of autism, other neurodevelopmental and psychiatric diagnoses, and autistic traits in transgender and gender-diverse individuals*, 11 NAT. COMMUN., no. 3959, 2020, <https://perma.cc/6L3Q-CLV5>.

¹⁷ GENDER IDENTITY IN MONTGOMERY COUNTY PUBLIC SCHOOLS, *supra* note 14, at 6.

¹⁸ Brief for Dr. Erica E. Anderson as Amicus Curiae, *supra* note 13, at 20.

¹⁹ Kathianne Boniello, *California couple sues LA schools for trans ‘secrecy policy’ after teen’s suicide: ‘Social contagion,’* N.Y. POST (Mar. 14, 2026, 12:42 p.m.), <https://perma.cc/RF4U-S2HA>.

suicide and began self-harming after her school facilitated her social transition.²⁰ Her parents discovered their daughter was presenting as a boy at school only when she was hospitalized.²¹ Yet when their daughter returned to school, the school ignored the parents' wishes and continued using a boy's name and pronouns to identify their daughter.²² Another case from Virginia illustrates how school staff members promote social transitioning to students—but then fail to provide any support for those students. After a teacher overheard fourteen-year-old S.B. expressing to a friend that she wished to begin identifying as a boy, school staff encouraged her to socially transition.²³ At the time, S.B. was struggling with mental health and “experienced hallucinations, suffered from depression and eating disorders, and began engaging in self-harm.”²⁴ When S.B. socially transitioned into identifying as a boy, she was threatened, bullied and harassed by other students.²⁵ But the school never notified S.B.'s parents about the bullying S.B. faced, or about her presenting as a boy at school.²⁶ School staff members instead “encouraged S.B. to embrace her male identity, and ... directed S.B. to internet sites, apps, and social media networks that promoted transgender ideas.”²⁷ S.B. ultimately suffered “a psychotic breakdown” and twice ran away from home, where she was abducted and sex trafficked.²⁸ At seventeen, S.B. began identifying as a girl again.²⁹

All three cases illustrate the harm caused by secret transition policies. The cases share a common structure: a vulnerable child, a school that decided it knew better than the parents, and a policy specifically designed to keep parents from finding out what was happening to their own child. The policy did not protect these students. It prevented the people who loved them most from doing so. Schools endanger students when they facilitate untested, and potentially harmful, interventions without parental involvement.

II. MCPS's gender identity policies infringe upon parents' and students' First Amendment Rights to practice their religion.

The harm from policies like MCPS's is not just a medical concern—though the facts and examples above should be enough to give any policymaker pause. These policies also present serious constitutional concerns.

We agree with MCPS on at least one thing: “[o]ur nation ... ha[s] a deep and long-standing commitment both to the protection of religious liberty and to the separation of church and state.”³⁰

²⁰ *Mirabelli*, 146 S. Ct. at 801.

²¹ *Id.*

²² *Id.*

²³ *Blair v. Appomattox Cnty. Sch. Bd.*, 147 F.4th 484, 488 (4th Cir. 2025).

²⁴ *Id.* at 487-88.

²⁵ *Id.* at 488-89.

²⁶ *Id.*

²⁷ *Id.* at 489 (cleaned up).

²⁸ *Id.* at 490.

²⁹ Logan Smith, *Liberty student honored during Trump's State of the Union says she found 'true healing in Christ'*, LIBERTY UNIV. (Mar. 4, 2026), <https://perma.cc/L7B7-ALKM>.

³⁰ MONTGOMERY CNTY. PUB. SCHS., RELIGIOUS DIVERSITY GUIDELINES 2025-2026 1 (2025), <https://perma.cc/J48B-P77K>.

After all, the Free Exercise Clause of the First Amendment mandates that “Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof*...”³¹ But despite this acknowledgment, MCPS’s policies on gender identity pay the Free Exercise Clause’s mandate no mind.

This indifference toward religious preference would be troubling anywhere, but it’s even more so in Montgomery County, Maryland—the most religiously diverse county in the United States.³² Parents and students served by MCPS come from varied religious traditions and backgrounds: approximately 60% of county residents identify as Christian; 2% as Orthodox Christian; 9.3% as Jewish; 3.2% as Muslim; 2.7% as Buddhist; 2.7% as Hindu; and 1.3% as Unitarian Universalist.³³ In 2020, around 27.7% of the county’s residents were members of a Catholic congregation, and 1.2% were members of the Church of Latter-day Saints.³⁴ The County also has a significant number of Seventh Day Adventists.³⁵

This diversity matters because MCPS’s policies do not merely burden one religious tradition—they burden virtually all of them. Views contrary to the district’s are strongly intertwined with religious tradition.³⁶ Catholic teaching holds that gender is an immutable characteristic of the person, inseparable from biological sex. Islamic teaching similarly holds that Allah created human beings as male and female and that this distinction is sacred and permanent. Orthodox Jewish tradition treats biological sex as a fundamental aspect of the human person created in the image of God. Buddhist tradition, the teachings of the Seventh Day Adventist Church and others hold views on sex and gender that are incompatible with MCPS’s insistence that a student’s self-declared gender identity supersedes biological sex and must be affirmed by school staff regardless of parental belief. In short, many religious Americans firmly “believe that biological sex reflects divine creation, that sex and gender are inseparable, and that children should be encouraged to accept their sex and to live accordingly.”³⁷ So based on those “deeply ingrained theologically grounded worldviews,” many “people of faith will treat others according to their assigned sex ... and will consider requiring them to acknowledge another’s gender identity to either be untruthful and/or unfaithful.”³⁸

An appreciation of the genuineness of biological sex might thus be called one of the few truly multifaith traditions. Yet it seems MCPS’s self-professed aim of respecting these many differing beliefs doesn’t extend to firmly held religious beliefs about sex and gender.³⁹

³¹ *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (cleaned up).

³² PUB. RELIGION RSCH. INST., 2023 PRRI CENSUS OF AMERICAN RELIGION 19 (2023), <https://perma.cc/378R-X3H9>.

³³ Aleja Hertzler-McCain, *Montgomery County, Maryland, was most religiously diverse US county in 2023*, RELIGIOUS NEWS SERV. (Aug. 30, 2024), <https://bit.ly/4mNPqva>.

³⁴ *Montgomery County, Maryland - County Membership Report (2020)*, ASS’N OF RELIGION DATA ARCHIVES, <https://perma.cc/4J8H-W8MZ> (last visited Apr. 27, 2026).

³⁵ Hertzler-McCain, *supra* note 33.

³⁶ Michael Lipka & Patricia Tevington, *Attitudes about transgender issues vary widely among Christians, religious ‘nones’ in U.S.*, PEW RSCH. CTR. (July, 7, 2022), <https://perma.cc/H4SS-3ZAM>.

³⁷ *Mahmoud v. Taylor*, 606 U.S. 522, 524 (2025).

³⁸ Victoria Susan Kolakowski, *The Role of Religious Objections to Transgender and Nonbinary Inclusion and Equality and/or Gender Identity Protection*, HUM. RTS. MAG. (July 5, 2022), <https://bit.ly/4d9pkPN>.

³⁹ RELIGIOUS DIVERSITY GUIDELINES, *supra* note 30, at 1.

MCPS’s policies elevate school officials’ preferred viewpoints over parents’ religious beliefs. Parents classified as sufficiently supportive are looped in.⁴⁰ But parents labeled as unsupportive are left totally in the dark—as to the existence of the plan, their child’s gender identity, and even the name their child uses in school.⁴¹ This approach confuses a parent’s disagreement with the school’s preferred views on gender identity and social transitions with unsafe or harmful conduct toward the child. Religious parents may not agree with the school’s views on gender identity while still providing loving care. Even parents who might be supportive of a student’s gender transition may feel providing support and ensuring the safety of their child requires a different approach than the one the school prefers.⁴² Those views must be accepted—not punished by exclusion.

Another policy instructs that students who “feel uncomfortable” sharing same-sex facilities with transgender students should be re-educated to accept MCPS’s preferred stance.⁴³ Rather than provide accommodations for students expressing their justifiable discomfort, the policy directs staff members to “work with students to address their discomfort to foster understanding of gender identity and to create a school culture that respects and values all students.”⁴⁴ Once again, the policy contains no religious exemption. Nor does the text indicate such views are “presented in a neutral manner.”⁴⁵ Quite the contrary. Students who feel uncomfortable sharing a same-sex space with transgender students are “pressure[d] to conform.”⁴⁶ Punishment is once again the norm for anyone who fails to fall in line with the district’s preferred view.

Both policies violate the free exercise clause. MCPS’s policies implicitly “condition the benefit of free public education” on parents’ willingness to accept both the school’s viewpoints on gender identity and the possibility that the school may determine socially transitioning their child is appropriate.⁴⁷ The policies also implicitly force parents “to submit their children to instruction that poses ‘a very real threat of undermining’ the religious beliefs and practices that the parents wish to instill.”⁴⁸

What’s more, the so-called parental-support measures violate parents’ right to free speech. Parental access and involvement are predicated on “parental speech that promotes the [school’s] conceptions of sexual orientation and gender identity ... on the theory that providing [MCPS’s] perspective to children on these issues ... is necessary to promote children’s safety and wellbeing.”⁴⁹ Even in 1943, it was a “fixed star in our constitutional constellation ... that no official ... can prescribe what shall be orthodox in politics, nationalism, religion, or other matters

⁴⁰ GENDER IDENTITY IN MONTGOMERY COUNTY PUBLIC SCHOOLS, *supra* note 14, at 3.

⁴¹ *Id.*

⁴² *See, e.g.*, Boniello, *supra* note 19 (noting mother would have supported son’s transition if she believed he was transgender).

⁴³ GENDER IDENTITY IN MONTGOMERY COUNTY PUBLIC SCHOOLS, *supra* note 14, at 5.

⁴⁴ *Id.*

⁴⁵ *Mahmoud*, 606 U.S. at 550.

⁴⁶ *Id.* (cleaned up).

⁴⁷ *Id.* at 530.

⁴⁸ *Id.* (cleaned up).

⁴⁹ *Bates v. Pakseresht*, 146 F.4th 772, 785 (9th Cir. 2025).

of opinion.”⁵⁰ Penalizing parents for voicing their views on sex and gender violates their First Amendment right to “speak ... regardless of whether the government considers his speech sensible and well intentioned or deeply misguided.”⁵¹

Any court would no doubt apply strict scrutiny to these policies.⁵² And in response, MCPS will likely emphasize that no facial discriminatory purpose is obvious in its policies. Yet that absence doesn’t alter the constitutional calculus here. “Facial neutrality is not determinative. The Free Exercise Clause ... extends beyond facial discrimination.”⁵³ MCPS’s policies were clearly “designed to present certain values and beliefs as things to be celebrated, and certain contrary values and beliefs as things to be rejected.”⁵⁴

At bottom, MCPS penalizes parents who have religious viewpoints or ideals that are objectionable to school officials. The policies then “cut out the primary protectors of children’s best interests: their parents.”⁵⁵ That punitive approach to religious conservatism can’t be right. MCPS’s policies do not withstand strict scrutiny.⁵⁶

III. The policies violate parents’ fundamental rights to raise their children.

Furthermore, MCPS’s policies deprive parents of their fundamental rights to direct their child’s medical treatment, religious upbringing, and education—rights that the Constitution guarantees. The Due Process Clause of the Fourteenth Amendment bars States from depriving any person of their “life, liberty[,] or property[,] without due process of law.”⁵⁷ The Supreme Court has explained that due process “denotes ... the right of the individual to ... establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.”⁵⁸

Whether grounded in the Due Process Clause, the Privileges or Immunities Clause,⁵⁹ or some other part of our Constitution,⁶⁰ parents’ interests “in the care, custody, and control of their children—[are] perhaps the oldest of the fundamental liberty interests recognized by this Court.”⁶¹ Such principles extend back even further. Common law recognized three enumerated parental duties:

⁵⁰ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

⁵¹ *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023) (cleaned up).

⁵² *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 531 (2022).

⁵³ *Lukumi*, 508 U.S. at 534.

⁵⁴ *Mahmoud*, 606 U.S. at 524.

⁵⁵ *Mirabelli*, 146 S. Ct. at 802.

⁵⁶ *Id.*

⁵⁷ *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (cleaned up).

⁵⁸ *Id.* (collecting cases).

⁵⁹ *Troxel v. Granville*, 530 U.S. 57, 80 n.* (2000) (Thomas, J., concurring).

⁶⁰ *Id.* at 91 (Scalia, J., dissenting); see also Luray Bucker, *A Right Defined by Duty: The Original Understanding of Parental Rights*, 37 NOTRE DAME J. OF L., ETHICS & PUB. POL’Y 493, 495-96 (2023) (describing constitutional sources of these fundamental rights).

⁶¹ *Troxel*, 530 U.S. at 65.

to “provide for the maintenance of their children,” to protect their children, and to provide their children “an education suitable to their station in life.”⁶²

MCPS’s policies directly intrude upon these long-recognized rights. Parents are excluded from the outset. In their place, school staff members are vested with unilateral authority to make decisions regarding students’ public gender identity and social transition. When the student and a school staff member begin implementing the plan for the student’s transition process, they jointly assign the student’s parents a subjective numerical support ranking.⁶³ A box below the parent’s numerical ranking asks: “If support level is low, what considerations must be accounted for in implementing this plan?”⁶⁴ If the staff member and student then perceive the parents to be unsupportive, the district excludes them from further steps. School staff, not parents, are even charged with providing emotional support for students who choose to undergo a social transition. The plan intake form provides a space for school officials to identify the student’s “go to adult” at school.⁶⁵

When schools unilaterally opt to facilitate novel and high-risk mental health interventions for students, that “government knows best” approach deprives parents of their substantive due process. Parents have the “right not to be shut out of participation in decisions regarding their children’s mental health.”⁶⁶ And make no mistake: changing what gender a student holds themselves out to be at school constitutes a form of medical intervention. Don’t take our word for it; the World Professional Association for Transgender Health, for instance, outlined “appropriate treatments for persons with gender dysphoria,” which include “[c]hanges in gender expression and role.”⁶⁷ And gender transition proponents generally agree that treatment for gender dysphoria “typically starts with a series of steps known as *social transition*.”⁶⁸

A child’s desire to socially transition doesn’t divest parents of their fundamental rights. By and large, “parents generally do act in the child’s best interests.”⁶⁹ So a child’s disagreement with a parent’s preferred treatment “does not automatically transfer the power to make that decision from the parents to some agency or officer of the state.”⁷⁰ MCPS’s view—that the school and student’s treatment choices should supersede that of their parents—is a stance “repugnant to American tradition.”⁷¹ “Th[e] primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”⁷²

⁶² 1 WILLIAM BLACKSTONE, COMMENTARIES *446-47, *449-51.

⁶³ MONTGOMERY CNTY. PUB. SCHS., MCPS FORM 560-80: INTAKE FORM: SUPPORTING STUDENT GENDER IDENTITY (2025), <https://perma.cc/3AKF-7JSM>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Mirabelli*, 146 S. Ct. at 803.

⁶⁷ *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 596 (4th Cir. 2020).

⁶⁸ *L. W. by & through Williams v. Skrametti*, 83 F.4th 460, 492 (6th Cir. 2023) (White, J., dissenting), *aff’d sub nom. United States v. Skrametti*, 605 U.S. 495 (2025).

⁶⁹ *Parham v. J. R.*, 442 U.S. 584, 602-03 (1979).

⁷⁰ *Id.* at 603.

⁷¹ *Id.*

⁷² *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

Although schools might disagree with the approach parents select, “personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.”⁷³ It is a “cardinal” principle, after all, “that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”⁷⁴ MCPS’s substantial intrusions into these arenas violate parents’ fundamental constitutional rights.

IV. MCPS’s secret transition and parental exclusion policies deprive parents of procedural due process.

Parents’ fundamental liberty interest in the care of their children “undeniably warrants deference and, absent a powerful countervailing interest, protection.”⁷⁵ So the Due Process Clause of the Fourteenth Amendment “imposes constraints on governmental decisions which deprive individuals” of protected liberty interests.⁷⁶ Yet MCPS’s parental exclusion process is procedurally indefensible under any recognized standard of due process. The Supreme Court has long held that when the government moves to deprive individuals of fundamental liberty interests, it must provide notice, an opportunity to be heard, and some meaningful basis for review. MCPS’s intake process provides none of these things.

MCPS has seemingly adopted a “statist notion that governmental power should supersede parental authority in *all* cases [involving a student’s desired gender identity] because *some* parents abuse and neglect children.”⁷⁷ Consider what actually happens under MCPS’s policy. The intake form uses a “1-10” scale to rank the level of perceived parental support for a student’s social gender transition.⁷⁸ Students sit with a staff member to decide the ranking.⁷⁹ This measure of parental support is vague, and the form offers no insight or guidance on how the ranking is completed.⁸⁰ MCPS describes this ranking as a measure of parents’ “support” or “safety” for the student.⁸¹ The ranking is based not on any objective assessment of parental conduct, but on the student’s own prediction of how their parents might respond—a prediction that may be colored by ordinary adolescent conflict, by ideological coaching from school staff, or simply by a teenager’s incomplete understanding of their parents’ actual views.

Based on this unchecked, undefined, unreviewed numerical score, parents can be excluded from knowledge of one of the most significant developments in their child’s life. Parents receive no notice that a ranking has been assigned. They have no opportunity to contest it. There’s no appeal. There’s no review—not by a principal, not by a superintendent, not by any neutral party. The form

⁷³ *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (collecting cases).

⁷⁴ *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (cleaned up).

⁷⁵ *Id.*

⁷⁶ *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

⁷⁷ *Parham*, 442 U.S. at 603.

⁷⁸ INTAKE FORM: SUPPORTING STUDENT GENDER IDENTITY, *supra* note 63.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

does not even require documentation of the basis for the ranking. Especially given the serious private interests of the parents and the substantial risk of harm in depriving that interest, one would expect a robust procedure.⁸²

Instead, the “support” ranking offers an idiosyncratic assessment of one staff member on the parents’ views on gender issues. “Support” can mean “to agree with or approve of.”⁸³ It also can mean “to give help or assistance to.”⁸⁴ A more practical meaning of “support” may also encompass giving “medicines, proper medical and nursing care ... and reasonable personal care, as well as the courtesies and kindness usually found between individuals that have familial blood ties”⁸⁵ “Safety,” on the other hand, equals “the condition of being safe from undergoing or causing hurt, injury, or loss.”⁸⁶ But we see no indication that the form is tied to these traditional understandings.

No clarity is offered as to what might be unsupportive, but it appears the students’ presumptions about their parents’ responses are enough—even though misjudgments by children about their parents are as old as parentage itself. It makes very little sense to measure parental support without parental input, yet that is precisely what MCPS policy does. Rather than bringing the parent into the fold from the start, the policy counsels that “[p]rior to contacting a student’s parent ..., 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.”⁸⁷

Parents deemed unsupportive have little recourse against these policies. That’s by design. Staff members are commanded by policy to conceal information regarding students’ gender identity from parents deemed unsupportive by the student and school.⁸⁸

The student’s perception that his parents don’t or won’t support his gender identity does not diminish the fundamental liberty interests his parents possess. “Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.”⁸⁹ If anything, a strain in familial relationships indicates that MCPS should provide parents with some form of “fundamentally fair procedure.”⁹⁰ Although we will not speculate on what procedure would be fair, it is clear some process is constitutionally owed to parents. MCPS’s secret transition and parental exclusion policies infringe on parents’ fundamental liberty interests without giving those parents even minimal process.

⁸² *Mathews*, 424 U.S. at 335.

⁸³ *Support*, THE BRITANNICA DICTIONARY (2026).

⁸⁴ *Id.*

⁸⁵ 73 AM. JUR. 2D *Support of Persons* § 1 (2026).

⁸⁶ *Safety*, MERRIAM-WEBSTER DICTIONARY (2026).

⁸⁷ GENDER IDENTITY IN MONTGOMERY COUNTY PUBLIC SCHOOLS, *supra* note 14, at 3.

⁸⁸ *Id.* at 5.

⁸⁹ *Santosky*, 455 U.S. at 753.

⁹⁰ *See id.* at 753-54 (“When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.”).

* * *

We support America First Legal Foundation’s request to the Departments to protect students by investigating MCPS’s flagrant constitutional violations. It is both morally and legally wrong for schools to intentionally conceal information about a student’s health and wellbeing from parents while imposing contested ideological principles on students. MCPS’s gender identity policies do just that.

The problems with MCPS’s secret transition policies may extend even beyond those we flag here. For instance, in addition to the safety and constitutional concerns we’ve raised, AFL has pointed out that these policies implicate serious violations of parents’ rights under the Family Educational Rights and Privacy Act.⁹¹ And all this isn’t even to mention what Maryland law might have to say about these policies. Altogether, parents and students deserve better.

Some might question why this degree of attention is warranted for one school district, but MCPS is not alone in enacting secret transition and parental exclusion policies. An estimated 21,314 schools nationwide have adopted similar policies that conceal students’ social gender transition from their parents.⁹² Despite the proliferation of similar policies nationwide, federal courts have largely been reluctant to address the serious constitutional implications of these policies.⁹³ That reluctance has stranded students and families. And litigation takes time that parents may not have.⁹⁴ So taking action against the egregious example Montgomery County has set is an important step toward addressing this systemic, nationwide issue.

We applaud the efforts the Departments have already undertaken to address similarly unlawful policies.⁹⁵ Beyond those steps (and the potential investigation here), the Departments might also consider jointly issuing guidance to school districts nationwide making clear that policies that systematically exclude parents from knowledge of their children’s social gender transition—based on unilateral, unreviewable assessments of parental fitness conducted by school staff and students—violate federal law and the constitutional rights of parents. And the Department of

⁹¹ 20 U.S.C. § 1232g. Certainly, the directive that records be kept secret seems directly contrary to FERPA’s mandate that student records be disclosed.

⁹² *List of School District Transgender – Gender Nonconforming Student Policies*, DEFENDING EDUC., <https://perma.cc/3ZR5-Z2WW> (last updated Mar. 11, 2026).

⁹³ See *Lee v. Poudre Sch. Dist. R-1*, 146 S. Ct. 26 (2025) (Alito, J., concurring in the denial of certiorari) (“I remain concerned that some federal courts are tempted to avoid confronting a particularly contentious constitutional question: whether a school district violates parents’ fundamental rights when, without parental knowledge or consent, it encourages a student to transition to a new gender or assists in that process.” (cleaned up)); see also *Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14 (2024) (Alito J., dissenting from denial of certiorari) (“I am concerned that some federal courts are succumbing to the temptation to use the doctrine of Article III standing as a way of avoiding some particularly contentious constitutional questions.”); *Int’l Partners for Ethical Care Inc. v. Ferguson*, 161 F.4th 604, 605 (9th Cir. 2025) (Vandyke, J. dissenting from denial of reh’g en banc) (“[O]ur court now joins a growing crowd of lower courts that appear to have made every effort to avoid addressing a constitutional confrontation occurring all across our Nation.”).

⁹⁴ See *Mirabelli*, 146 S. Ct. at 803 (“The denial of plaintiffs’ constitutional rights during the potentially protracted appellate process constitutes irreparable harm.”).

⁹⁵ Michael C. Bender, *Trump Administration Investigating L.A. Schools’ Gender Disclosure Policies*, N.Y. TIMES (Apr. 8, 2026), <https://bit.ly/4tnd97W>.

Education might flag that federal funding eligibility requires compliance with the obligations we describe above, such that those who facilitate secret transitions may be violating their funding obligations. In short, the Departments have an opportunity to safeguard these students and families by taking strong action now. We join AFL in urging you to take that opportunity.

Sincerely,



John B. McCuskey
West Virginia Attorney General



Steve Marshall
Alabama Attorney General



Tim Griffin
Arkansas Attorney General



James Uthmeier
Florida Attorney General



Christopher M. Carr
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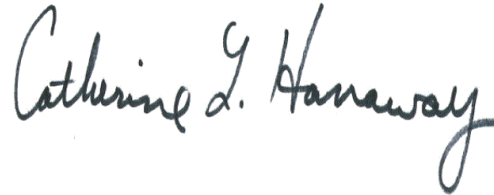
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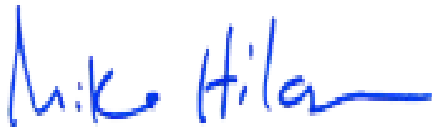
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Puerto Rico Attorney General



Alan Wilson
South Carolina Attorney General

A handwritten signature in black ink, reading "Marty J. Jackley". The signature is written in a cursive style with a prominent initial "M".

Marty J. Jackley
South Dakota Attorney General