



VIA EMAIL and US MAIL

September 23, 2026

Kimberly Richey
Assistant Secretary
Office for Civil Rights
Lyndon B. Johnson Department of Education Bldg. United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20002

Request for investigation regarding violations of applicable Executive Orders, Title IX of the Higher Education Act of 1972, and the Constitution by the public-school systems of St. Paul, MN; Rosemount-Apple Valley-Eagan, MN; Minneapolis, MN; Anoka-Hennepin, MN; Osseo, MN; Rochester, MN; Robbinsdale, MN; North St. Paul-Maplewood-Oakdale, MN; Bloomington, MN; Duluth, MN; White Bear Lake, MN; Burnsville-Eagan-Savage, MN; Moorhead, MN; Hopkins, MN; Richfield, MN

Dear Assistant Secretary Richey:

The Upper Midwest Law Center (“UMLC”) is a public-interest law firm based in Minnesota. We work to preserve freedom, uphold the Constitution, guarantee essential federal civil rights protections, and expose abuses of power.

On February 27, 2025, UMLC sent a letter to Acting Assistant Secretary Craig Trainor about fifteen Minnesota School Districts that were acting in violation of President Trump’s three Executive Orders that corrected significant misunderstandings and abuses of Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), protected women and girls from harmful gender ideology, and promised investigations of violations of Title IX and other federal laws.

The Executive Orders are:

- President Trump’s January 20, 2025, Executive Order entitled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;”
- President Trump’s January 29, 2025, Executive Order entitled “Ending Radical Indoctrination in K-12 Schooling;” and
- President Trump’s February 5, 2025, Executive Order entitled “Keeping Men Out of Women’s Sports.”

Pursuant to these Executive Orders, Title IX, and other executive authority, the Office for Civil Rights of the United States Department of Education (“OCR”) launched an investigation

into the Minnesota State High School League (“MSHSL”) on February 12, 2025.¹ In response, Minnesota Attorney General Keith Ellison released a letter to the MSHSL on February 20, 2025, in which he directed the MSHSL to disregard the Trump Administration’s Executive Orders and continue to permit boys to play in girls’ sports.² *Exhibit Q*. The Trump Administration then brought *United States of America v. Minnesota Department of Education; and Minnesota State High School League*, Case No. 26-cv-02078 (filed March 30, 2026) to enforce the law.³

Despite this litigation, fourteen offending school districts have not made public steps to come into compliance with the Executive Orders or Title IX.⁴ Additionally, UMLC has become aware of two additional school districts that have policies and procedures that violate the Executive Orders and Title IX.

Based upon all of the above, UMLC once again respectfully requests that the OCR open investigations into the following public-school districts in Minnesota for continuing violations of the aforementioned Executive Orders, Title IX, the U.S. Constitution, and other applicable federal laws:

1. St. Paul Public Schools (ISD #625);
2. Rosemount-Apple Valley-Eagan Public School District (ISD #196);
3. Minneapolis Public School District (Special School District #1);
4. Anoka-Hennepin School District (ISD #11);
5. Osseo Area School District (ISD #279);
6. Rochester Public School District (ISD #535);
7. Robbinsdale Public Schools (ISD #281);
8. North St. Paul-Maplewood-Oakdale School District (ISD #622);
9. Bloomington Public School District (ISD #271);
10. Duluth Public Schools (ISD #709);

¹ U.S. Department of Education Launches Title IX Investigations into Two Athletic Associations,” Feb. 12, 2025, <https://www.ed.gov/about/news/press-release/us-department-of-education-launches-title-ix-investigations-two-athletic-associations>.

² <https://www.ag.state.mn.us/Office/Opinions/1035-20250220.pdf>

³ <https://www.courthousenews.com/wp-content/uploads/2026/03/Trump-admin-transgender-suit.pdf>

⁴ The Minnesota Transitions Charter School has apparently deleted its policy, so it is no longer included in this letter.

11. White Bear Lake Area School District (ISD #624)
12. Burnsville-Eagan-Savage School District (ISD #191);
13. Moorhead School District (ISD #152);
14. Hopkins Public School District (ISD #270);
15. Richfield Public Schools (ISD #280); and
16. St. Louis Park School District (ISD #283)

These school districts violate the law by maintaining policies that permit “intersex, transgender, two-spirit, gender expansive, non-binary, and gender-questioning students” to use sex-segregated intimate facilities (including restrooms and locker rooms) consistent with their “gender identity,”⁵ while denying individuals whose “gender identity” is the same as their sex the ability to feel safe and comfortable in the use of the sex-segregated common restrooms and locker rooms of their sex.

These school districts also violate Title IX by stating that “all students shall be permitted to participate in physical education classes, health education classes, and intramural sports and activities in a manner consistent with their gender identity”⁶ and therefore place individuals whose “gender identity” is the same as their sex at a physical disadvantage. Additionally, these school districts seek to hide student social sex transitions from their parents, in violation of the Constitution.

The Relevant Policies and Regulations

All relevant policies are attached as Exhibits to this letter. They are similar in scope, definitions, and provisions. This letter will describe in detail the policies of four of Minnesota’s largest school districts and then highlight differences and important nuances in the remaining district policies.

St. Paul Public Schools

St. Paul Public Schools’ “Gender Inclusion” policy (Policy No. 500) provides that all students must have “access to facilities that best align with students’ gender identity, and/or the facilities the student feels safest accessing.” *Exhibit B.*⁷ The policy also provides “all students the opportunity to participate in co-curricular and extracurricular activities in a manner consistent with their gender identity, including but not limited to intramural and interscholastic athletics.” *Id.*

⁵ See, e.g., Minneapolis Public Schools, Gender Inclusion, <https://tinyurl.com/bdfnz3bp>.

⁶ *Id.*

⁷ St. Paul Public Schools, “Gender Inclusion,” <https://www.spps.org/about/departments/equity/programming/out-for-equity/gender-inclusion-policy>

In St. Paul's policy, "Gender Identity" is defined as including the claim that "[a] person's gender identity may or may not correspond to their assigned sex at birth or to their primary or secondary sex characteristics." *Id.* Gender Fluid is described as "someone whose gender identity is not fixed and may shift over time." *Id.* "Questioning" is defined as "someone who has not yet self-identified their sexual orientation, gender identity, gender expression, or some combination of the three." *Id.*

The policy requires that staff "respect the gender identity and gender expression of all students by honoring their right to be identified and addressed by their self-identified name and pronouns. Staff will not refer to a student using their 'dead name.'" *Id.*

Finally, the policy requires schools to "[p]rovide all students the opportunity to socially transition during the timing and manner of which they choose." *Id.* "Information related to a student's transition cannot be disclosed without consent of the student and/or family." *Id.*

In its "Gender Inclusion Procedures" document (Policy Procedure No. 500.00.01), St. Paul further requires that, "regardless of parental consent," school district "[s]taff must honor the student's preferred name and pronoun usage" and follow student preferences (after a private conversation) in addressing the student in "communications to the student's parent(s)/legal guardians(s)." *Id.* School officials are directed to notify parents only if a student permits it. *Id.* From there, students have "access to facilities, including but not limited to, restrooms and locker rooms," along with athletic teams and extracurriculars, that align with the student's gender as listed in the District's system. *Id.* Likewise, students are roomed on overnight field trips with the same gender as listed in the District's system. *Id.*

President Trump's Executive Orders prohibit federally funded K-12 schools from: failing to recognize that there are two sexes, male and female, which are not changeable and are grounded in fundamental and incontrovertible reality; undermining all-female athletic opportunities by allowing male competitive participation in women's sports; allowing males into all-female locker rooms; and engaging in the "social transition" of a child, which includes modifying a person's name or pronoun. St. Paul's policy and procedures violate these Executive Orders.

St. Paul's policy is even more troubling because, according to Minnesota's own data, only 34.8% of St. Paul students were proficient in reading in 2025. The State of Minnesota is unwilling to seriously address the District's failings. Only federal government action can stop the indoctrination so students can get back to learning to read in St. Paul.⁸

Rosemount-Apple Valley-Eagan Public Schools

Rosemount-Apple Valley-Eagan Public School District ("Rosemount") states in its "Gender Inclusion" policy (Policy No. 503.9AR) that "every student may request to be addressed by a

⁸ Minnesota Department of Education ("MDE"), "Minnesota Report Card," St. Paul Public Schools Student Achievement Level – Reading, https://rc.education.mn.gov/#mySchool/orgId--10625000000_groupType--district_p--3. The proficiency results for each district discussed herein may also be downloaded at the same website.

name and pronoun that corresponds to the student's gender identity." *Exhibit C*.⁹ Furthermore, "[w]ith respect to facilities, including all restrooms, locker rooms or changing facilities, students will have access that corresponds to their gender identity." *Id.* For physical education and intramurals, students are to participate "in a manner consistent with their gender identity. All students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity as permitted by the Minnesota State High School League." *Id.* Finally, "[a]ll students, regardless of their gender identity, have the right to participate fully in overnight trips and other activities. Student accommodations on overnight trips shall be consistent with their gender identity." *Id.*

Rosemount defines "Gender identity" as "a person's internal, deeply felt sense of being female, male, a blend of both or neither. The term refers to how individuals perceive themselves and what they call themselves and it can be the same as or different from their sex assigned at birth." *Id.* Rosemount further defines "Transgender" as "an umbrella term for individuals whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation." *Id.*

Rosemount violates the Executive Orders listed above, Title IX, and other federal laws by: denying the reality of two sexes; failing to protect girls from playing against males in sports; requiring girls to share bathrooms and locker rooms with boys; allowing boys to sleep in the same room as girls on overnight field trips; and requiring staff to use pronouns that do not correspond to the sex of students.

Again, these violations are especially problematic in light of student achievement in Rosemount schools. In 2025, only 56.7% of students were proficient in reading.¹⁰

Minneapolis Public Schools

The Minneapolis School District provides that "students and staff of Minneapolis Public Schools (MPS) deserve respectful and inclusive learning environments that value students' gender identity and gender expression." *Exhibit D*.¹¹ Its "Gender Inclusion" policy (Policy No. 5025) purports to address "the inequities some students, including intersex, transgender, two-spirit, gender expansive, non-binary, and gender-questioning students, confront as they navigate a system designed using a gender binary model." *Id.*

Minneapolis' policy defines "Gender Identity" as "a person's deeply held sense or psychological knowledge of their own gender. A person's gender identity can be the same or different from the sex or gender assigned at birth." *Id.* "Gender Expression" refers to "the manner in which a person represents or expresses that person's gender identity to others,

⁹ <https://tinyurl.com/2vn8jasu>.

¹⁰ MDE, "Minnesota Report Card 2025," Rosemount Public Schools Student Achievement Level – Reading, <https://tinyurl.com/4pfdr86k>.

¹¹ <https://tinyurl.com/bdfnz3bp>.

often through behavior, clothing, hairstyles, activities, or mannerisms. Although transgender people typically seek to make their gender expression match their gender identity, rather than their sex assigned at birth, gender expression may or may not conform to a person's gender identity." *Id.*

Minneapolis then defines "Gender Expansive" to be an "umbrella term that is used to describe individuals whose gender expression, gender identity, or gender role is fluid and/or may differ from gender norms associated with their sex assigned at birth. This term also includes people who identify outside of traditional gender categories or identify as both or several genders. Other terms that can have a similar meaning include 'gender diverse,' 'gender non-conforming,' 'genderqueer,' and 'nonbinary.'" *Id.* Finally, Minneapolis describes "Transgender/Trans" as "people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth. Transgender identity is not dependent on medical procedures or other physical changes." *Id.*

Minneapolis further asserts that "a transgender and/or gender expansive student in all grades has the right to be referred to at school by a name and pronouns that align with their gender identity." *Id.* Facility access, which "includes, but is not limited to, multi-stalled gendered restrooms, locker rooms, and school programs, trips, and athletic programs" is available to students "consistent with the student's gender identity." *Id.* Similarly, "students shall have access to the restroom that corresponds to their gender identity asserted at school." *Id.* In case the point wasn't clear enough, the policy also states that "[i]n no case shall any student be required to use a restroom that conflicts with the student's gender identity." The same applies to locker rooms. *Id.* If a girl has a concern with sharing a locker room with a boy, then the policy provides that she will "*if possible*, be provided with a reasonable alternative changing area." *Id.* (emphasis added).

Minneapolis allows boys to compete against girls in all "physical education classes, health education classes, and intramural sports and activities in a manner consistent with their gender identity." *Id.* Similarly, "students shall be permitted to participate in all school trips in a manner that corresponds with their gender identity." The same applies to interscholastic sports: "[a]ll students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and in compliance with the applicable regulations of the Minnesota State High School League (MSHSL)." *Id.* Finally, students may request to be called by pronouns or names that do not align with their biological sex without parental knowledge or consent. *Id.*

Minneapolis School District's Gender Inclusion policy violates all of the aforementioned Executive Orders and Title IX. And Minneapolis does so while only preparing 40.8% of students to read at grade-level proficiency.¹²

Anoka-Hennepin School District

¹² MDE, "Minnesota Report Card," Minneapolis Public Schools Student Achievement Level – Reading, <https://tinyurl.com/4k35utdt>.

Anoka-Hennepin School District is Minnesota's largest school district, and its policies violate the Constitution and federal law. *See* Anoka Hennepin School District "102.0G Equal Educational Opportunity Policy - Gender Inclusion Guidance." *Exhibit N*. Anoka-Hennepin's Gender Identity policy permits students to request pronoun and name changes. *Id.* It also permits students to use "all facilities consistent with students' gender identity," including restrooms and locker rooms. *Id.* The District follows the MSHSL policy that allows boys to play in girls' sports. *Id.*

Finally, Anoka Hennepin's "Gender Inclusion" policy permits students to "discuss and express their gender identity openly or may decide when, with whom, and how much to share private information." *Id.* Thus, students are permitted to request that their gender identity data be withheld from their parents. *Id.*

Anoka-Hennepin focuses on these issues while only 52.6% of its students are proficient in reading.¹³

Other Troubling School District Policies

The following school districts have also promulgated gender policies that appear to violate the Executive Orders listed above. The provisions of these policies are substantially similar to the St. Paul Public Schools, Rosemount-Eagan-Apple Valley Public Schools, Minneapolis Public Schools, and Anoka Hennepin School District policies detailed above:

- Rochester Public Schools "Supporting Transgender and/or Gender Expansive Students" policy (Policy No. 413A). *Exhibit E*.¹⁴
 - Only 47.8% of students in Rochester public schools are proficient in reading.¹⁵
- Robbinsdale Public Schools "Gender Identity" policy (Administrative Procedure No 522.1 and Policy No. 522.1). *Exhibit F*.¹⁶
 - Robbinsdale's "Gender Identity" policy is notable in its unusually broad definition of "Gender Identity" which is defined as "[o]ur deeply held, internal sense of self as masculine, feminine, a blend of both, neither, or something else. Identity also includes the name we use to convey our gender. Gender identity can correspond to or differ from the sex we are assigned at birth." *Id.* Robbinsdale also provides "[e]xamples of pronouns:" "She, her, hers;" "He, him, his" "They, them, theirs;" and "Xe ('zee'), xir ('zeer'), xirs ('zeers')." Notably, "[t]his is not a comprehensive list and students and staff should be allowed to identify their preferred pronouns." *Id.*

¹³ MDE, "Minnesota Report Card," <https://tinyurl.com/hk5ht458>

¹⁴ <https://tinyurl.com/4ayk2skr>.

¹⁵ MDE, "Minnesota Report Card," Rochester Public Schools Student Achievement Level – Reading, <https://tinyurl.com/pad6adb3>.

¹⁶ Robbinsdale Public Schools, "Administrative Procedure 522.1 – Gender Identity," <https://tinyurl.com/y53bekmn>; Robbinsdale Public Schools, "522.1 – Gender Identity," <https://tinyurl.com/mpbv9wde>.

- Only 41.2% of Robbinsdale’s students are proficient in reading.¹⁷
- North St. Paul-Maplewood-Oakdale School District “Gender Inclusion” policy (Policy No. 535). *Exhibit G*.¹⁸
 - Reading proficiency is especially poor in North St. Paul schools, with only 35.7% of students reading at grade-level proficiency.¹⁹
- Bloomington Public School District “Student-Gender Inclusion” policy (Policy No. 540). *Exhibit H*.²⁰
 - Bloomington’s “Student-Gender Inclusion” policy contains the following notable warning to those who disagree with its gender ideology: “The intentional or persistent refusal to respect a student’s gender identity (for example, intentionally referring to the student by a name or pronoun that does not correspond to the student’s gender identity) can constitute harassment and is a violation of this policy.” *Id.*
 - In Bloomington, 41.8% of students are proficient at reading.²¹
- Duluth Public Schools “Gender Inclusion” policy (Policy No. 541). *Exhibit I*.²²
 - In Duluth, 55.7% of students are proficient in reading.²³
- White Bear Lake Area School District’s “Administrative Guidelines for Transgender and Gender-Expansive Student Rights and Protections” policy (Policy No. 413 Addendum-C). *Exhibit J*.²⁴
 - White Bear Lake’s gender policy has an unusual definition of sex that clearly violates President Trump’s Executive Order, Title IX, and other federal laws: “Sex refers a set of biological attributes. It is primarily associated with physical and physiological features including chromosomes, gene expression, hormone

¹⁷ MDE, “Minnesota Report Card,” Robbinsdale Public Schools Student Achievement Level – Reading, <https://tinyurl.com/majrs4t3>.

¹⁸ <https://www.isd622.org/about/policies/policy/~board/policies/post/535>.

¹⁹ MDE, “Minnesota Report Card,” North St. Paul Public Schools Student Achievement Level – Reading, <https://tinyurl.com/bdzm2624>.

²⁰ <https://tinyurl.com/mw3emwd9>.

²¹ MDE, “Minnesota Report Card,” Bloomington Public Schools Student Achievement Level – Reading, <https://tinyurl.com/4yx2c83f>.

²² <https://tinyurl.com/238xfh79>.

²³ MDE, “Minnesota Report Card,” Duluth Public Schools Student Achievement Level – Reading, <https://tinyurl.com/4ym683tk>.

²⁴ <https://tinyurl.com/jzz9ujvt>.

levels and function, and reproductive/sexual anatomy. Sex is usually categorized as female, male, or intersex, but there is variation in the biological attributes that comprise sex and how those attributes are expressed.” *Id.*

- Just over half—52.7 percent—of White Bear Lake students are reading at proficiency.²⁵
- Burnsville-Eagan-Savage School District “Transgender and Gender Expansive Students (Policy No. 413R). *Exhibit K.*²⁶
 - Burnsville-Eagan-Savage School District’s policy contains a broad definition of “Gender Non-Conforming”, which is defined as “people whose gender expression differs from social expectations, such as ‘feminine’ boys, ‘masculine’ girls, and those who are perceived as androgynous. This phrase also includes people who identify outside traditional gender categories.” *Id.*
 - Only 35.9% of students in Burnsville schools are proficient in reading.²⁷
- Moorhead School District “Guidelines for Supporting Student and Employee Gender Identity and Gender Expression” (Policy No. 413.2). *Exhibit L.*²⁸
 - Moorhead’s gender policy contains punitive measures similar to Bloomington against those who refuse to follow its gender ideology: “The intentional or persistent refusal to respect a person’s gender identity (for example, intentionally referring to the student by a name or pronoun that does not correspond to the student’s gender identity) is a violation of MAPS Policy 413, Prohibition of Harassment and Violence.” *Id.* It is, of course, totally absurd for anyone to claim to be a victim of “violence” when spoken to in a manner that observes biological reality.
 - Again, this school district needs to get back to teaching: only 44.1% of students in Moorhead are proficient in reading.²⁹
- Hopkins Public School District “Gender Inclusion” policy (Policy No. 552). *Exhibit M.*³⁰

²⁵ MDE, “Minnesota Report Card,” White Bear Lake Public Schools Student Achievement Level – Reading, <https://tinyurl.com/bd7zczdf>.

²⁶ <https://tinyurl.com/2c8pb4mh>.

²⁷ MDE, “Minnesota Report Card,” Burnsville Public Schools Student Achievement Level – Reading, <https://tinyurl.com/4a93jdvs>.

²⁸ <https://tinyurl.com/2zprku7r>.

²⁹ MDE, “Minnesota Report Card,” Moorhead Public Schools Student Achievement Level – Reading, <https://tinyurl.com/rkzyx5n5>.

³⁰ <https://tinyurl.com/5a3mbvbb>.

- 48.7% of students in Hopkins are proficient in reading.³¹
- Richfield Public Schools “Gender Inclusion Policy” (Policy No. 586). *Exhibit O*.³²
 - Only 37.5% of Richfield students are proficient at reading.³³
- Osseo Area School District “Gender Inclusion Policy” (Policy 508). *Exhibit P*.³⁴
 - Only 47% of Osseo high school students are proficient in reading.³⁵
- St. Louis Park Public School District “Gender Inclusion” Policy (Policy 536). *Exhibit R*.
 - 53.3% of St. Louis Park Public School District students are proficient at reading.³⁶

**The Relevant School Policies, Regulations, and Guidance Violate the
Executive Orders, the U.S. Constitution, and Title IX**

Since the Executive Orders were published, the United States Supreme Court has issued three Opinions that support those Orders and undermine the sexual identity policies of the offending school districts. They are:

- *Mahmoud v. Taylor*, 606 U.S. 522 (2025), in which the Supreme Court found that the Montgomery County School District violated the Constitution’s Free Exercise Clause by failing to offer parents the right to opt their child out of parts of the curriculum where pro-LGBTQ books were assigned to students.
- *Mirabelli v. Bonta*, 607 U.S. 492 (2026), in which the Supreme Court found that School District policies related to transitioning the sex of children and pronoun usage without parental knowledge or consent violated the Free Exercise Clause and impaired parents’ constitutional right to direct the upbringing and education of their children.
- *West Virginia v. BPJ*, 609 U.S. ___, 146 S. Ct. 2356 (2026), in which the Supreme Court held that states which maintain separate sports team by sex regardless of transgender claims do not violate Title IX or the Equal Protection Clause.

³¹ MDE, “Minnesota Report Card,” Hopkins Public Schools Student Achievement Level – Reading, <https://tinyurl.com/4j8kmknm>.

³² <https://tinyurl.com/5hxc59ff>.

³³ MDE, “Minnesota Report Card,” Richfield Public Schools Student Achievement Level – Reading, <https://tinyurl.com/nhat8hza>.

³⁴ <https://tinyurl.com/heejevau3>.

³⁵ MDE, “Minnesota Report Card,” Osseo School District Achievement Level – Reading, https://rc.education.mn.gov/#mySchool/orgId--10279000000_groupType--district_p--3.

³⁶ https://rc.education.mn.gov/#mySchool/orgId--10283000000_groupType--district_p--3

Collectively, *Mahmoud*, *Mirabelli*, and *BPJ* confirm that: 1) Title IX, at minimum, permits states to have separate sports team for boys and girls and that transgender students do not have the right to select a team outside of their biological sex (Title IX also requires this, but the Court did not reach that question in *BPJ*); 2) forcing students to receive instruction in support of radical “gender ideology” agenda violates parents’ Constitutional Free Exercise rights; and 3) hiding a child’s sex transitions and pronoun changes from her parents violates their constitutional right to direct the upbringing and education of their children. These principles are entirely consistent with, and strengthen, the Trump Administration’s Executive Orders and view of Title IX.

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

Despite the obvious and well-settled principle that sex is an immutable characteristic, the Biden Administration issued a rule interpreting Title IX that jettisoned the reality of biological sex in favor of “gender identity.” In June and July of 2024, numerous federal district courts enjoined the Biden Administration’s rule on the grounds that Title IX prohibits discrimination on the basis of sex, not gender identity. See, e.g., *Oklahoma v. Cardona*, No. CIV-24-00461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *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 (D. Kan. July 2, 2024); *Tennessee v. Cardona*, No. 2:24-cv-072-DCR, 2024 WL 3631032 (E.D. Ky. July 10, 2024); *Louisiana v. U.S. Dep’t of Educ.*, 737 F. Supp. 3d 377 (W.D. La. 2024).

Following an appeal from the Fifth and Sixth Circuits’ denial of a stay of the injunctions issued by the District Courts for the Western District of Louisiana and the Eastern District of Kentucky, the Supreme Court of the United States upheld those denials. See *United States Dep’t of Educ. v. Louisiana*, 603 U.S. 866 (2024). Notably, all nine justices “accept[ed] that the plaintiffs were entitled to preliminary injunctive relief as to three provisions of the rule, including the central provision that newly defines sex discrimination to include discrimination on the basis of sexual orientation and *gender identity*.” *Id.* at 867 (emphasis added). On January 9, 2025, the federal Eastern District of Kentucky granted a permanent, nationwide injunction on the Biden Administration’s unlawful rewrite of Title IX. See *Tennessee v. Cardona*, Case No. 2:24-cv-72-DCR, 2025 WL 63795 (E.D. Ky. Jan. 9, 2025).

Because the Biden Title IX rules have been enjoined, the prior rules prohibiting the above-described discrimination control.³⁷ Title IX prohibits discrimination on the basis of biological

³⁷ See United States Department of Education, Office for Civil Rights, Dear Colleague Letter (January 31, 2025), <https://perma.cc/3FZE-2M34>.

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 use 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. The relevant policies and application of those policies in the school districts identified above illustrate these exact points.

In each of these school districts, a “gender expansive or transgender student” has access to the sex-segregated common restrooms and locker rooms of the opposite sex because they claim they need such access to be safe and comfortable in their subjective sense of “gender identity.” But when other students whose “gender identity” is the same as their biological sex object on the grounds that they now feel *unsafe* and *uncomfortable* in the common sex-segregated restrooms and locker rooms that have traditionally been designated exclusively for their sex, those students’ only option is generally to use a private restroom or an alternative (and then, only if such alternative facilities are available). In other words, the relevant policies provide greater rights to students whose “gender identity” does not match their biological sex than 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.” *Cf. Bostock v. Clayton Cnty.*, 590 U.S. 644, 665 (2020) (when discrimination is motivated by the difference between expressed sex identity and biological sex, “it necessarily and intentionally discriminates” because of sex).

Additionally, each school district policy attached asserts that “gender expression” is the way students assert their “gender identity.” In other words, a boy can express his “gender identity” as female merely by adopting the “behavior, clothing, hairstyles, activities, voice, or mannerisms” of a female. This is the exact type of sex-based classification that patently “rest[s] on impermissible stereotypes” and is unlawful sex discrimination. *J.E.B. v. Alabama*, 511 U.S. 127, 139 n.11 (1994). Furthermore, the school district policy’s hiding of student sex transitions from parents is a violation of the parents’ rights to “direct the upbringing and education of their children.” *Mirabelli*, 607 U.S. at 497.

Action by the OCR is especially critical in this case because of Minnesota Attorney General Keith Ellison’s February 20, 2025 legal opinion, where he stated that President Trump’s “Executive Order does not have the force of law and cannot supersede Minnesota state law.” Attorney General Ellison interprets Minnesota law to require MSHSL, and by extension those districts which follow MSHSL policy to permit transgender women (i.e., men claiming to be women) to compete against actual women in high school sports. *Exhibit Q*.³⁸ In so doing, Attorney General Ellison claims that “[t]he Executive Order...was not issued pursuant to a statutory mandate or express delegation of authority from Congress.” *Id.* He squarely denies that the President has the authority under Title IX or other federal law to withhold federal funds to MSHSL (or its member school districts) if they fail to follow the Executive Orders discussed above and the Trump Administration’s (correct) interpretation of Title IX. This direct challenge to the authority of the federal government to enforce federal law, including

³⁸ Op. Atty. Gen. 1035, Feb. 20, 2025, <https://www.ag.state.mn.us/Office/Opinions/1035-20250220.pdf>.



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Title IX, raises substantial questions under the Supremacy Clause, and should be addressed by OCR and the DOJ. *See Felder v. Casey*, 487 U.S. 131, 138 (1988) (“any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield”) (citations omitted).

The possible effect of Attorney General Ellison’s wrong opinion under Minnesota law increases the urgency of these matters in Minnesota. Under Minnesota law, an Attorney General opinion to a public school district on a matter of public importance “shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.” Minn. Stat. §8.07. While Attorney General Ellison’s legal opinion was directed to the MSHSL, and therefore may not fall within Minn. Stat. §8.07, it still persuasive authority, and thus imperative that OCR and the DOJ take action to ensure that *other* school districts not identified herein that do *not* desire to violate Title IX and President Trump’s order do not believe they are bound by Attorney General Ellison’s reckless and faulty legal opinion.

Conclusion

The sixteen Minnesota public school systems identified herein have, by policy, eliminated the protections that Title IX requires of K-12 institutions that accept federal funding; their policies run afoul of President Trump’s Executive Orders of January 20, 2025, January 29, 2025, and February 5, 2025, are illegal under Title IX, and violate the U.S. Constitution. For far too long, they have incorrectly 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.”

As these school districts have shown no inclination to end their discriminatory policies, the Department of Education should immediately open investigations into these schools and, if necessary, cut off all federal funding. OCR’s (and DOJ’s) vigorous action against these schools is particularly warranted because it has already filed suit against the Minnesota Department of Education and the Minnesota State High School League due to their publicly stated refusal not to follow the requirements of Title IX, President Trump’s Executive Orders, and because of the direct challenge to the federal Supremacy Clause by Minnesota Attorney General Keith Ellison.

If you would like to discuss these matters further, I would welcome the conversation.

Sincerely,

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center
brent.robbs@umlc.org

Enclosures: relevant policies of 16 Minnesota school districts; certain correspondence



Page **14** of **14**

Assistant Secretary Kimberly Richey

September 23, 2026

identified as exhibits (for cc:ed parties, enclosures are only attached electronically)

Cc: Harmeet Dhillon, Assistant Attorney General for Civil Rights, Department of Justice; Minnesota Attorney General Keith Ellison; Minnesota House Speaker Lisa Demuth; GOP Floor Leader Harry Niska; DFL Caucus Leader Zack Stephenson; Senate Majority Leader Erin Murphy; Senate Minority Leader Mark Johnson; Erich Martens, Executive Director, Minnesota State High School League; U.S. House Majority Leader Tom Emmer; Rep. Michelle Fischbach; Rep. Pete Stauber; Rep. Brad Finstad; Rep. Ilhan Omar; Rep. Betty McCollum; Rep. Kelly Morrison; Rep. Angie Craig



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Minnesota State High School League
2100 Freeway Boulevard
Brooklyn Center, MN 55430-1735

Dear General Counsel:

I am writing with respect to what we assert are the Minnesota State High School League's ("MSHSL" or "your") violations of federal law, state law, and Presidential Executive Orders associated with your policy 300.3, which deals with transgender students (the "Policy"). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for MSHSL to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students and putting girls at risk. This letter is also a caution. The Department of Justice has already sued you and the Minnesota Department of Education¹ for these issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose taxpayers to additional litigation risk.

The MSHSL's Gender Identity Policy Permits Boys to Jeopardize Girl's Safety and Deny Them Fair Opportunities

In the Policy, the Minnesota State High School League allows boys to compete against girls when they declare that their "gender identity or expression" is female.² This occurs when a "student has a consistent gender identity or that the gender identity is sincerely held as part of the student's core identity and the gender identity is different from the student's sex assigned at birth and that the student wishes to participate."

The Policy Violates Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school district and the MSHSL's Policy. *See Exhibit A*. This letter outlines how the Policy, along with the sixteen Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* ("Title IX"), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls,

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² <https://www.mshsl.org/sites/default/files/2026-08/mshsl-handbook-300-series.pdf>



including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.

- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Under Minnesota law, athletic teams are allowed to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” *See West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

According to a March 2026 International Olympic Committee (IOC) Policy document, boys have “a performance advantage in all sports and events that rely on strength, power, and/or endurance.” *IOC Policy on the Protection of the Female (Women’s) Category in Olympic Sport* at 2.³ That’s because they have “larger and stronger skeletal muscle and bone, larger and stronger hearts, [and] larger lung size.” *Id.* The magnitude of the advantage is significant: they have a 20+% advantage in “most throwing and jumping events,” a 10-12% advantage in “most running and swimming events,” and a “greater than 100 per cent” advantage in “events that involve explosive power.” *Id.* at 3. That is why the International Olympic Committee, United States Olympic and Paralympic Committee, and the NCAA have all banned biological males from competing against biological females. *B.P.J.*, 143 S.Ct. at 2367.

Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; *see also* Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly

³ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>



permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); *see also* 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams for boys and girls. The Policy violates these laws.

**Attorney General Keith Ellison’s Legal Opinion
to the MSHSL Is Not Persuasive or Binding on MSHSL**

You may have been counseled that a Legal Opinion from Minnesota Attorney General Keith Ellison to the MSHSL dated February 20, 2025 (“MSHSL Opinion”) requires a different reading of Minnesota law than outlined in the previous section. This is not the case.

First, General Ellison’s MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA’s gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

Second, the MHRA sections cited by General Ellison do not address the specific issue here, which generally involve a biological boy who identifies as a girl seeking to play in girls’ sports (or vice versa). A rule that, for reasons of safety, privacy, and fairness, protects biological girls from participating against biological boys is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04.

General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:

The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to



public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

Relevant to this matter, §8.07 provides that the Attorney General's Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court.

The language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only "certain school matters," not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a "a nonprofit corporation that is a voluntary association of high schools." Minn. Stat. §128C.01. Therefore, the Attorney General's MSHSL Opinion does not bind you.

If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the MSHSL should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the MSHSL's Policy violates federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to agree with Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL Policy at issue here. By eliminating the Policy, you will provide equal opportunity for girls in sports.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
North St. Paul–Maplewood–Oakdale School District 622
2520 East 12th Avenue
North St. Paul, MN 55109-2420

Dear General Counsel:

I am writing with respect to what we assert are the North St. Paul-Maplewood-Oakdale School District (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Gender Inclusion” Policy No. 535¹ (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request to the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League² for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

The District’s Policy defines “Gender Identity” as “a person’s deeply held sense or psychological knowledge of their own gender. One’s gender identity can be the same as or different from their sex assigned at birth.” The Policy describes “Transgender” as “gender identity or expression different from that traditionally associated with an assigned sex at birth.”

The Policy asserts that “every student may request to be addresses by a name and pronoun that corresponds to the student’s gender identity.” Facility access, which includes “restrooms, locker rooms, or changing facilities” is available to students which “correspond to their identity.” The same applies to locker rooms. *Id.* If a girl has a concern with sharing a locker room with a boy, then the Policy provides that she “*may* request to be provided with a reasonable alternative.” (emphasis added).

The Policy allows boys to compete against girls in all “activities or conform to rules, procedures or practices consistent with their gender identity and the rules, policies, and

¹ School District 622 North St. Paul-Maplewood-Oakdale, *535-Gender Inclusion*
<https://www.isd622.org/about/policies/policy/~board/policies/post/535>

² *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>



procedures established by the Minnesota State High School League. Finally, students may request to be called by pronouns or names that do not align with their biological sex without parental knowledge or consent.

The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information about sex transitions from parents are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public

and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” See *West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

According to a March 2026 International Olympic Committee (IOC) Policy document, boys have “a performance advantage in all sports and events that rely on strength, power, and/or endurance.” *IOC Policy on the Protection of the Female (Women’s) Category in Olympic Sport* at 2.³ That’s because they have “larger and stronger skeletal muscle and bone, larger and stronger hearts, [and] larger lung size.” *Id.* The magnitude of the advantage is significant: they have a 20+% advantage in “most throwing and jumping events,” a 10-12% advantage in “most running and swimming events,” and a “greater than 100 per cent” advantage in “events that involve explosive power.” *Id.* at 3. That is why the International Olympic Committee, United States Olympic and Paralympic Committee, and the NCAA have all banned biological males from competing against biological females. *B.P.J.*, 143 S.Ct. at 2367.

Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; see also Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); see also 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

Attorney General Keith Ellison’s Legal Opinion to the MSHSL Is Not Persuasive or Binding on the District

You may have been counseled that a Legal Opinion from Minnesota Attorney General Keith Ellison to the Minnesota State High School League dated February 20, 2025 (“MSHSL Opinion”) requires a different reading of Minnesota law than outlined in the previous section. This is not the case.

³ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>

First, General Ellison's MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA's gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls' sports, or use girls' bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*'s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court's decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman's bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boy's bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boy's bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *N.H.* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 S.Ct. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:



The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

Relevant to this matter, §8.07 provides that the Attorney General's Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court. To start with, given that General Ellison's letter is to the MSHSL, and not to the District, it does not bind you.

Second, the language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only "certain school matters," not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a "a nonprofit corporation that is a voluntary association of high schools." Minn. Stat. §128C.01. Therefore, the Attorney General's MSHSL Opinion does not bind the MSHSL either. Thus, the MSHSL Opinion does not bind you, or any other school in Minnesota.

If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.



Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent Robbins". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Anoka-Hennepin School District, ISD 11
2727 N. Ferry Street
Anoka, MN 55303

Dear General Counsel:

I am writing with respect to what we assert are the Anoka-Hennepin School District (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Gender Inclusion” Policy No. 102.0G¹ and the current proposed changes titled Supporting Transgender and/or Gender-Expansive Students (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk and permitting the invasion of private spaces by the opposite sex. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League² for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

The District’s Gender Inclusion Policy Permits Boys to Violate Girl’s Spaces and May Infringe Parental Rights

The District’s Policy asserts that “access to use all facilities consistent with the students’ gender identity.” This includes, “changing area, shower areas, and toilets.” The term “gender identity” is not defined in the Policy. The District states that it will “avoid using gender as a characteristic for divisions whenever possible” in activities and will follow MSHSL’s policy that allows for boys to play in girls’ sports. While the District promises to involve parents in most situations, including the adoption of different forenames and pronouns, it has a non-public form (“Minor Student Request to Deny Parent/Guardian Access to Private Data”) under which the Superintendent is permitted to withhold data from parents.

The Policy Violates Federal Law and, Perhaps, the Constitution

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the

¹ Anoka-Hennepin Schools, *102.0G Equal Education Opportunity Policy – Gender Inclusion Guidance*, <https://www.ahschools.us/about/policies/individual/~board/policies/post/1020g-equal-educational-opportunity-policy-gender-inclusion-guidance>

² *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>



Policy, along with fifteen other Minnesota School District policies, violates federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

The Policy may also violate the U.S. constitution by having a process that results in hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children” to the extent the Policy hides information from parents about their children (as outlined above, the District has a non-public form that allows the Superintendent to withhold information from parents). *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.*, Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” *See West Virginia v. B.P.J.*, 609 U.S. ___, 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.



According to a March 2026 International Olympic Committee (IOC) Policy document, boys have “a performance advantage in all sports and events that rely on strength, power, and/or endurance.” *IOC Policy on the Protection of the Female (Women’s) Category in Olympic Sport* at 2.³ That’s because they have “larger and stronger skeletal muscle and bone, larger and stronger hearts, [and] larger lung size.” *Id.* The magnitude of the advantage is significant: they have a 20+% advantage in “most throwing and jumping events,” a 10-12% advantage in “most running and swimming events,” and a “greater than 100 per cent” advantage in “events that involve explosive power.” *Id.* at 3. That is why the International Olympic Committee, United States Olympic and Paralympic Committee, and the NCAA have all banned biological males from competing against biological females. *B.P.J.*, 143 S.Ct. at 2367.

Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; *see also* Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); *see also* 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

Attorney General Keith Ellison’s Legal Opinion to the MSHSL Is Not Persuasive or Binding on the District

You may have been counseled that a Legal Opinion from Minnesota Attorney General Keith Ellison to the Minnesota State High School League dated February 20, 2025 (“MSHSL Opinion”) requires a different reading of Minnesota law than outlined in the previous section. This is not the case.

First, General Ellison’s MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA’s gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

³ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls' sports, or use girls' bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*'s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court's decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman's bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 S.Ct. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:

The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.



Relevant to this matter, §8.07 provides that the Attorney General's Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court. To start with, given that General Ellison's letter is to the MSHSL, and not to the District, it does not bind you.

Second, the language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only "certain school matters," not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a "nonprofit corporation that is a voluntary association of high schools." Minn. Stat. §128C.01. Therefore, the Attorney General's MSHSL Opinion does not bind the MSHSL either. Thus, the MSHSL Opinion does not bind you, or any other school in Minnesota.

If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the federal law, Minnesota law, the President's Executive Orders, and perhaps the U.S. Constitution. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.

Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Bloomington Public Schools
1350 W. 106th Street
Bloomington, MN 55431

Dear General Counsel:

I am writing with respect to what we assert are the Bloomington Public Schools (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Student-Gender Inclusion” Policy No. 540 (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Student-Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

In the Policy, “Gender Identity” is defined as including the claim that it is “an individual’s sense of being male, female, or otherwise.”² Transgender is defined as an “individual whose gender is different from the gender.”

The Policy provides that all students must have access to facilities, including bathrooms, changing areas, overnight trips and locker rooms “that align with the student’s gender identity asserted consistently at school. With respect to sports and physical education activities, students are permitted to participate “in a manner that aligns with their gender identity,” which is consistent the Minnesota State High School League’s policy.

“All students have the right to be referred to by their identified name and/or pronoun.” If a superintendent or designee makes “a determination parental knowledge of this proposed name or pronoun that access is not in the best interest of the child (i.e. to protect from maltreatment),” then the District will fail to inform the parents of their child’s name or pronoun change, or other aspects of their “gender status.”

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² <https://www.bloomington.k12.mn.us/sites/default/files/2024-06/policy-540-student-gender-inclusion-.pdf>



The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). The Policy allows the District to withhold information from parents about their children’s “gender status,” if the superintendent or designee “makes a determination” that there may be maltreatment. This is not the process for reporting or investigating maltreatment of children, which is handled by local law enforcement and the Minnesota Department Children, Youth, and Families.³ Thus, under the Policy, parents are excluded from critical decisions about their children based upon a unilateral “determination” by the superintendent and is, therefore, unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and

³ *See* <https://dcyf.mn.gov/individuals-and-families/report-abuse>

it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” See *West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

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Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; see also Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); see also 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

⁴ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>



**Attorney General Keith Ellison’s Legal Opinion
to the MSHSL Is Not Persuasive or Binding on the District**

You may have been counseled that a Legal Opinion from Minnesota Attorney General Keith Ellison to the Minnesota State High School League dated February 20, 2025 (“MSHSL Opinion”) requires a different reading of Minnesota law than outlined in the previous section. This is not the case.

First, General Ellison’s MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA’s gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls’ sports, or use girls’ bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*’s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court’s decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman’s bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic “plain language” analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA*



Powerlifting, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court’s analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*’s holding. *B.P.J.*, 146 SCt. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:

The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

Relevant to this matter, §8.07 provides that the Attorney General’s Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court. To start with, given that General Ellison’s letter is to the MSHSL, and not to the District, it does not bind you.

Second, the language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only “certain school matters,” not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P’ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a “a nonprofit corporation that is a voluntary association of high schools.” Minn. Stat. §128C.01. Therefore, the Attorney General’s MSHSL Opinion does not bind the MSHSL either. Thus, the MSHSL Opinion does not bind you, or any other school in Minnesota.

If you believe otherwise, §8.07 makes clear that the Attorney General’s opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison’s MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District’s Policy violates the U.S. Constitution, federal law, Minnesota law, and the President’s Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota’s (www.makeitfairmn.com) effort to change the MSHSL’s policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.



Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent Robbins". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Burnsville-Eagan-Savage School District 191
200 West Burnsville Parkway
Burnsville, MN 55337

Dear General Counsel:

I am writing with respect to what we assert are the Burnsville-Eagan-Savage School District (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Transgender and Expansive Students” Policy No. 413R (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

In the Policy, “Gender Identity” is defined as including the claim that it is “a person’s deeply held sense or psychological knowledge of their own gender, regardless of the sex or gender assigned at birth.” “Gender Expansive describes someone with a more flexible gender identity than might be associated with a typical gender binary.” The Policy also states that “Transgender/Trans describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.”

The Policy provides that students who claim to be Transgender can participate in interscholastic athletics, physical education classes, health education classes, and intramural sports and activities, restrooms, and locker rooms that all students must have access to facilities, including bathrooms and locker rooms, that are “consistent with their gender identity.”² Participation on school trips are to be handled the same way.

Students are allowed to update their preferred name and pronouns in the District’s system without parental notification or consent.

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² <https://www.isd191.org/discover/board-of-education/policies/details/~board/district-policies/post/413r-transgender-and-gender-expansive-students>



The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information from parents about their children, including name and pronoun changes, are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men

and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” See *West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

According to a March 2026 International Olympic Committee (IOC) Policy document, boys have “a performance advantage in all sports and events that rely on strength, power, and/or endurance.” *IOC Policy on the Protection of the Female (Women’s) Category in Olympic Sport* at 2.³ That’s because they have “larger and stronger skeletal muscle and bone, larger and stronger hearts, [and] larger lung size.” *Id.* The magnitude of the advantage is significant: they have a 20+% advantage in “most throwing and jumping events,” a 10-12% advantage in “most running and swimming events,” and a “greater than 100 per cent” advantage in “events that involve explosive power.” *Id.* at 3. That is why the International Olympic Committee, United States Olympic and Paralympic Committee, and the NCAA have all banned biological males from competing against biological females. *B.P.J.*, 143 S.Ct. at 2367.

Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; see also Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); see also 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

Attorney General Keith Ellison’s Legal Opinion to the MSHSL Is Not Persuasive or Binding on the District

You may have been counseled that a Legal Opinion from Minnesota Attorney General Keith Ellison to the Minnesota State High School League dated February 20, 2025 (“MSHSL Opinion”) requires a different reading of Minnesota law than outlined in the previous section. This is not the case.

³ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>

First, General Ellison's MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA's gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls' sports, or use girls' bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*'s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court's decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman's bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 SCt. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:



The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

Relevant to this matter, §8.07 provides that the Attorney General's Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court. To start with, given that General Ellison's letter is to the MSHSL, and not to the District, it does not bind you.

Second, the language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only "certain school matters," not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a "a nonprofit corporation that is a voluntary association of high schools." Minn. Stat. §128C.01. Therefore, the Attorney General's MSHSL Opinion does not bind the MSHSL either. Thus, the MSHSL Opinion does not bind you, or any other school in Minnesota.

If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.



Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent Robbins".

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Duluth Public Schools, ISD 709
709 Portia Johnson Drive
Duluth, MN 55811

Dear General Counsel:

I am writing with respect to what we assert are the Duluth Public Schools (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Gender Inclusion” Policy No. 541¹ (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League² for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

The District’s Policy defines “Gender Identity” as “a person’s deeply held sense or psychological knowledge of their own gender. A person’s gender identity can be the same or different from the sex or gender assigned at birth.” The Policy describes “Transgender/Trans” as “people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth. Transgender identity is not dependent on medical procedures or other physical changes.”

The Policy asserts that “a transgender and/or gender-non-conforming student in all grades has the right to be referred to at school by a name and pronouns that align with their gender identity.” Facility access, which “includes, but is not limited to, multi-stalled gendered restrooms, locker rooms, and school programs, trips, and athletic programs” is available to students “consistent with the student’s gender identity.” Similarly, “students shall have access to the restroom that corresponds to their gender identity asserted at school.” In case the point wasn’t clear enough, the Policy also states that “[i]n no case shall any student be required to use a restroom that conflicts with the student’s gender identity.” The same applies to locker

¹ Duluth Public Schools, *541 Gender Inclusion*, <https://resources.finalsite.net/images/v1679692785/isd709org/tvopsfzs8cohwrz8xai4/541GenderInclusiondocx3.pdf>

² *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>



rooms. If a girl has a concern with sharing a locker room with a boy, then the Policy provides that she will “*if possible*, be provided with a reasonable alternative changing area.” *Id.* (emphasis added).

The Policy allows boys to compete against girls in all “physical education classes, health education classes, and intramural sports and activities in a manner consistent with their gender identity.” Similarly, “students shall be permitted to participate in all school trips in a manner that corresponds with their gender identity.” The same applies to interscholastic sports: “[a]ll students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and in compliance with the applicable regulations of the Minnesota State High School League (MSHSL).” *Id.* Finally, students may request to be called by pronouns or names that do not align with their biological sex without parental knowledge or consent. *Id.*

The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A.* This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information about sex transitions from parents are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

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Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” *See West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

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athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

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The MHRA sections cited by General Ellison do not address the specific issue here, which generally involve a biological boy who identifies as a girl seeking to play in girls’ sports, or use girls’ bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

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Additionally, *N.H.* applied a simplistic “plain language” analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not



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Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *N.H.* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 S.Ct. at 2375.

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If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.



Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent Robbins".

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Hopkins Public Schools
1001 Highway 7
Hopkins, MN 55305

Dear General Counsel:

I am writing with respect to what we assert are the Hopkins Public Schools (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Guidelines for Supporting Student And Employee Gender Identity and Gender Expression” Policy No. 552 (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

In the Policy, “Gender Identity” is defined as including the claim that it is an “individual’s knowledge of being male, female, or otherwise on a continuum of gender.”² “Gender Expression” is defined as the “manner in which an individual realizes and manifests their gender.” The Policy also states that “Transgender” is defined as an “individual whose gender identity or gender expression is different from the gender stereotype for that person’s assigned gender.”

The Policy provides that students who claim to be Transgender can participate in physical education classes, intramural sports, interscholastic athletics, restrooms, locker rooms, and changing areas “consistent with their gender identity.” Participation on school trips are to be handled the same way.

Students are allowed to request a change in their preferred name and pronouns without parental notification or consent.

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² <https://www.hopkinsschools.org/district/policies/individual-policy/~board/district-policies/post/552-gender-inclusion>



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On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

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- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information from parents about their children, including name and pronoun changes, are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
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It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

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Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men

and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” See *West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

According to a March 2026 International Olympic Committee (IOC) Policy document, boys have “a performance advantage in all sports and events that rely on strength, power, and/or endurance.” *IOC Policy on the Protection of the Female (Women’s) Category in Olympic Sport* at 2.³ That’s because they have “larger and stronger skeletal muscle and bone, larger and stronger hearts, [and] larger lung size.” *Id.* The magnitude of the advantage is significant: they have a 20+% advantage in “most throwing and jumping events,” a 10-12% advantage in “most running and swimming events,” and a “greater than 100 per cent” advantage in “events that involve explosive power.” *Id.* at 3. That is why the International Olympic Committee, United States Olympic and Paralympic Committee, and the NCAA have all banned biological males from competing against biological females. *B.P.J.*, 143 S.Ct. at 2367.

Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; see also Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); see also 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

Attorney General Keith Ellison’s Legal Opinion to the MSHSL Is Not Persuasive or Binding on the District

You may have been counseled that a Legal Opinion from Minnesota Attorney General Keith Ellison to the Minnesota State High School League dated February 20, 2025 (“MSHSL Opinion”) requires a different reading of Minnesota law than outlined in the previous section. This is not the case.

³ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>

First, General Ellison's MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA's gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls' sports, or use girls' bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*'s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court's decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman's bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 SCt. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:



The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

Relevant to this matter, §8.07 provides that the Attorney General's Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court. To start with, given that General Ellison's letter is to the MSHSL, and not to the District, it does not bind you.

Second, the language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only "certain school matters," not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a "a nonprofit corporation that is a voluntary association of high schools." Minn. Stat. §128C.01. Therefore, the Attorney General's MSHSL Opinion does not bind the MSHSL either. Thus, the MSHSL Opinion does not bind you, or any other school in Minnesota.

If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.



Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, which appears to read "Brent Robbins", is written over a horizontal line.

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Minneapolis Public Schools
1250 West Broadway Avenue
Minneapolis, MN 55411

Dear General Counsel:

I am writing with respect to what we assert are the Minneapolis Public School District's ("the District" or "your") violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your "Gender Inclusion" Policy No. 5025 (the "Policy"). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District's Gender Inclusion Policy Permits Boys
to Violate Girl's Spaces and Infringe Parental Rights**

The District's Policy defines "Gender Identity" as "a person's deeply held sense or psychological knowledge of their own gender."² A person's gender identity can be the same or different from the sex or gender assigned at birth." The Policy describes "Transgender/Trans" as "people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth. Transgender identity is not dependent on medical procedures or other physical changes."

The Policy asserts that "a transgender and/or gender expansive student in all grades has the right to be referred to at school by a name and pronouns that align with their gender identity." *Id.* Facility access, which "includes, but is not limited to, multi-stalled gendered restrooms, locker rooms, and school programs, trips, and athletic programs" is available to students "consistent with the student's gender identity." Similarly, "students shall have access to the restroom that corresponds to their gender identity asserted at school." In case the point wasn't clear enough, the Policy also states that "[i]n no case shall any student be required to use a restroom that conflicts with the student's gender identity." The same applies to locker rooms. If a girl has a concern with sharing a locker room with a boy, then

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² https://mps.municipalcodeonline.com/book?type=policies#name=Policy_5025:_Gender_Inclusion



the Policy provides that she will “*if possible*, be provided with a reasonable alternative changing area.” (emphasis added).

The Policy allows boys to compete against girls in all “physical education classes, health education classes, and intramural sports and activities in a manner consistent with their gender identity.” Similarly, “students shall be permitted to participate in all school trips in a manner that corresponds with their gender identity.” The same applies to interscholastic sports: “[a]ll students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and in compliance with the applicable regulations of the Minnesota State High School League (MSHSL).” Finally, students may request to be called by pronouns or names that do not align with their biological sex without parental knowledge or consent.

The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information from parents about their children, including name and pronoun changes, allowing children to play sports against children of the other sex, and permitting use of bathrooms, locker rooms and other facilities of the other sex are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.*, Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” *See West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

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Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; *see also* Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); *see also* 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate

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athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

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First, General Ellison’s MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA’s gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls’ sports, or use girls’ bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

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Additionally, *N.H.* applied a simplistic “plain language” analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not



rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 SCt. at 2375.

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If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. See, e.g., *Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort



to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.

Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink that reads "Brent Robbins". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Osseo Area Schools, ISD 279
11200 93rd Avenue North
Maple Grove, MN 55369

Dear General Counsel:

I am writing with respect to what we assert are the Osseo Area School District (“the District” or “your”) violations of federal law, state law, and Presidential Executive Orders associated with your “Gender Inclusion” Policy No. 508 (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, and permitting the invasion of private spaces by the opposite sex. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

The District’s Gender Inclusion Policy Permits Boys to Violate Girl’s Spaces

The District’s Policy defines “Gender Identity” is defined as a “person’s deeply held sense or knowledge of one’s own gender, regardless of the sex assigned at birth.”² The District’s Policy provides that all students must have “the opportunity to participate in co-curricular and extracurricular activities in a manner consistent with their gender identity, including but not limited to intramural and interscholastic athletics.” The Policy also provides those students with “access to facilities that best align with students’ gender identity.”

The Policy requires that staff “respect all students’ sexual orientation, gender identity, gender expression and gender non-conformity.” Furthermore, the District will “[i]dentify and address students by their preferred names and pronouns that align with their gender identity.”

President Trump’s Executive Orders prohibit federally funded K-12 schools from: failing to recognize that there are two sexes, male and female, which are not changeable and are grounded in fundamental and incontrovertible reality; undermining all-female athletic opportunities by allowing male competitive participation in women’s sports; allowing males

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² <https://www.osseoschools.org/about-us/policies/individual-policy/~board/school-board-policies/post/508-policy-gender-inclusion>



into all-female locker rooms; and engaging in the “social transition” of a child, which includes modifying a person’s name or pronoun. The District’s policy and procedures violate these Executive Orders.

The Policy Violates Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

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Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” *See West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out

of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

According to a March 2026 International Olympic Committee (IOC) Policy document, boys have “a performance advantage in all sports and events that rely on strength, power, and/or endurance.” *IOC Policy on the Protection of the Female (Women’s) Category in Olympic Sport* at 2.³ That’s because they have “larger and stronger skeletal muscle and bone, larger and stronger hearts, [and] larger lung size.” *Id.* The magnitude of the advantage is significant: they have a 20+% advantage in “most throwing and jumping events,” a 10-12% advantage in “most running and swimming events,” and a “greater than 100 per cent” advantage in “events that involve explosive power.” *Id.* at 3. That is why the International Olympic Committee, United States Olympic and Paralympic Committee, and the NCAA have all banned biological males from competing against biological females. *B.P.J.*, 143 SCt. at 2367.

Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; *see also* Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); *see also* 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

Attorney General Keith Ellison’s Legal Opinion to the MSHSL Is Not Persuasive or Binding on the District

You may have been counseled that a Legal Opinion from Minnesota Attorney General Keith Ellison to the Minnesota State High School League dated February 20, 2025 (“MSHSL Opinion”) requires a different reading of Minnesota law than outlined in the previous section. This is not the case.

First, General Ellison’s MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA’s gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for

³ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>

instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls' sports, or use girls' bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*'s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court's decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman's bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 SCt. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:

The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an



opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

Relevant to this matter, §8.07 provides that the Attorney General's Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court. To start with, given that General Ellison's letter is to the MSHSL, and not to the District, it does not bind you.

Second, the language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only "certain school matters," not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a "a nonprofit corporation that is a voluntary association of high schools." Minn. Stat. §128C.01. Therefore, the Attorney General's MSHSL Opinion does not bind the MSHSL either. Thus, the MSHSL Opinion does not bind you, or any other school in Minnesota.

If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.

Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports and preserve intimate spaces from unwarranted intrusion.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Richfield Public Schools
401 70th Street West
Richfield, MN 55423

Dear General Counsel:

I am writing with respect to what we assert are the Richfield Public Schools (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Guidelines for Supporting Student And Employee Gender Identity and Gender Expression” Policy No. 586 (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

In the Policy, “Gender Identity” is defined as an “individual’s sense of being a girl/woman, boy/man or otherwise on a continuum of gender.”² “Gender Expression” is defined as the “way in which an individual presents their gender through actions, dress, and demeanor and how those presentations are interpreted.” “Transgender/Trans [d]escribes an individual whose gender identity is different from the gender that traditionally corresponds to the sex assigned to them at birth.”

The Policy provides that students who claim to be Transgender can participate in physical education classes, intramural sports, interscholastic athletics, and use restrooms, locker rooms, and changing areas in a way that “aligns with their gender identity.” Participation in overnight trips is to be handled the same way.

Students are allowed to request a change in their preferred name and pronouns without parental notification or consent.

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² <https://www.richfieldschools.org/about/policies/individual/~board/school-board-policies/post/586-policy>



The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information from parents about their children, including name and pronoun changes, are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive



fairness concerns that would arise if males were allowed to compete in female sports.” *See West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

According to a March 2026 International Olympic Committee (IOC) Policy document, boys have “a performance advantage in all sports and events that rely on strength, power, and/or endurance.” *IOC Policy on the Protection of the Female (Women’s) Category in Olympic Sport* at 2.³ That’s because they have “larger and stronger skeletal muscle and bone, larger and stronger hearts, [and] larger lung size.” *Id.* The magnitude of the advantage is significant: they have a 20+% advantage in “most throwing and jumping events,” a 10-12% advantage in “most running and swimming events,” and a “greater than 100 per cent” advantage in “events that involve explosive power.” *Id.* at 3. That is why the International Olympic Committee, United States Olympic and Paralympic Committee, and the NCAA have all banned biological males from competing against biological females. *B.P.J.*, 143 S.Ct. at 2367.

Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; *see also* Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); *see also* 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

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First, General Ellison’s MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See*

³ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>

Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA's gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls' sports, or use girls' bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*'s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court's decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman's bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 SCt. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:



The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

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If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.



Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, which appears to read "Brent Robbins", is written over a horizontal line.

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

September 28, 2026

General Counsel
Robbinsdale Area Schools
4148 Winnetka Avenue North
New Hope, MN 55427

Dear General Counsel:

I am writing with respect to what we assert are the Robbinsdale Public Schools (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Gender Identity” Policy No. 522.1 (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

In the Policy, “Gender Identity” is defined as including the claim that it is “a person’s deeply held sense or psychological knowledge of their own gender. A person’s gender identity can be the same or different from the sex or gender assigned at birth.” “Gender Expansive is an umbrella term that is used to describe individuals whose gender expression, gender identity, or gender role is fluid and/or may differ from gender norms associated with their sex assigned at birth. This term also includes people who identify outside of traditional gender categories or identify as both or several genders. Other terms that can have a similar meaning include “gender diverse,” “gender non-conforming,” “genderqueer,” and “nonbinary.””

The Policy provides that all students must have access to facilities, including bathrooms and locker rooms, that “correspond to the gender identity the student or staff assert at school.”² Participation on school trips are to be handled the same way. With respect to activities, which presumably includes sports, students are permitted to “self-select the group in which

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² <https://www.rdale.org/discover/school-board-policies/article/~board/policies-administrative-procedures/post/5221-ap-gender-identity>



they would feel most comfortable.”

Students are allowed to update their preferred name and pronouns in the District’s system without parental notification or consent.

The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information from parents about their children, including name and pronoun changes, allowing children to play sports against children of the other sex, and permitting use of bathrooms, locker rooms and other facilities of the other sex are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

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Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.”

§363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

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Additional support is found §121A.04, which requires schools "to provide an equal opportunity for members of each sex ... to participate in athletic programs." *Id.*, subd. 2; see also Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to "be restricted to members of a sex whose overall athletic opportunities have been previously limited." Minn. Stat. §121A.04, subd. 3(d); see also 34 C.F.R. §106.41 (b) (under Title IX, entities "may operate or sponsor separate teams for members of each sex"). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: "Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . ." Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

**Attorney General Keith Ellison's Legal Opinion
to the MSHSL Is Not Persuasive or Binding on the District**

³ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>

You may have been counseled that a Legal Opinion from Minnesota Attorney General Keith Ellison to the Minnesota State High School League dated February 20, 2025 (“MSHSL Opinion”) requires a different reading of Minnesota law than outlined in the previous section. This is not the case.

First, General Ellison’s MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA’s gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls’ sports, or use girls’ bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*’s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court’s decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman’s bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic “plain language” analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court’s analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently

discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 SCt. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:

The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

Relevant to this matter, §8.07 provides that the Attorney General's Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court. To start, given that General Ellison's letter is to the MSHSL, and not to the District, it does not bind you.

Second, the language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only "certain school matters," not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a "a nonprofit corporation that is a voluntary association of high schools." Minn. Stat. §128C.01. Therefore, the Attorney General's MSHSL Opinion does not bind the MSHSL either. Thus, the MSHSL Opinion does not bind you, or any other school in Minnesota.

If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.



Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent Robbins".

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Rochester Public Schools
615 7th Street SW
Rochester, MN 55902

Dear General Counsel:

I am writing with respect to what we assert are the Rochester Public Schools (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Gender Inclusion” Policy No. 413A (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

The District’s Policy defines “Gender Identity” as “a person’s deeply held sense or psychological knowledge of their own gender, regardless of the sex or gender they were assigned at birth. A person’s gender identity can be the same or different from the sex or gender assigned at birth.”² “Gender Expansive” is defined as “someone with a more flexible gender identity than is associated with the gender binary.”

The Policy asserts that a “student or a parent/guardian has the right to request that the student be referred to by a preferred name and pronouns that reflect the student’s gender expression by all school staff and fellow students, unless the student’s principal determines that the use of a particular name or pronoun would be patently offensive.” The Policy states that “Transgender and gender expansive students shall have access to gendered facilities that are consistent with the student’s gender identity. This includes, but is not limited to, multi-stalled gendered restrooms and locker rooms.” The same applies to locker rooms and overnight school trips.

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² <https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36031425&revid=tslshV0jqrLPIU1GvCaRskE8w==&ptid=p6cSCZdPTOf4D3nrlpluslRnw==&secid=tgXX6LPA166ygZS74CSPMA==&PG=6&IRP=0&isPndg=false>



The Policy allows boys to compete against girls in all “in school-sponsored sports and activities in a manner consistent with their gender identity or in a manner that allows the student to feel the safest, included, and most comfortable. Finally, students may request to be called by pronouns or names that do not align with their biological sex without parental knowledge or consent. Only if parents directly ask for information about their child’s gender transition from a staff member who has the information, will information be shared with them:

If a parent or guardian requests information about their child who is under the age of 18, including information about whether their child identifies as transgender, gender-expansive, or whether their child has asked to use a name, pronouns, restrooms, or locker rooms based on the child’s gender identity rather than their legal name or sex assigned at birth, a staff member must provide that information to the parent/guardian if the staff member is in possession of that information at the time the request is made.

Otherwise, information about their child’s gender transition is hidden from parents.

The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information about sex transitions and only disclose them when asked directly and then only “if the staff member is in possession of that information at the time the request is made” is unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Mirabelli*, 607 U.S. at 496-98.
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).



It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” *See West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

According to a March 2026 International Olympic Committee (IOC) Policy document, boys have “a performance advantage in all sports and events that rely on strength, power, and/or endurance.” *IOC Policy on the Protection of the Female (Women’s) Category in Olympic Sport* at 2.³ That’s because they have “larger and stronger skeletal muscle and bone, larger and stronger hearts, [and] larger lung size.” *Id.* The magnitude of the advantage is significant: they have a 20+% advantage in “most throwing and jumping events,” a 10-12% advantage in “most running and swimming events,” and a “greater than 100 per cent” advantage in “events that involve explosive power.” *Id.* at 3. That is why the International Olympic Committee, United States Olympic and Paralympic Committee, and the NCAA have all banned biological males from competing against biological females. *B.P.J.*, 143 S.Ct. at 2367.

Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; *see also* Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); *see also* 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for

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members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

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The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls’ sports, or use girls’ bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

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discriminatory for employers to bar a transgender man from using the woman's bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

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If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. See, e.g., *Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits



As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.

Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent Robbins".

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Saint Paul Public Schools, District 625
360 Colborne Street
Saint Paul, MN 55102

Dear General Counsel:

I am writing with respect to what we assert are the St. Paul Public Schools (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Gender Inclusion” Policy No. 500 (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

St. Paul Public Schools’ “Gender Inclusion” policy (Policy No. 500) provides that all students must have “access to facilities that best align with students’ gender identity, and/or the facilities the student feels safest accessing.”² The policy also provides “all students the opportunity to participate in co-curricular and extracurricular activities in a manner consistent with their gender identity, including but not limited to intramural and interscholastic athletics.”

In St. Paul’s policy, “Gender Identity” is defined as including the claim that “[a] person’s gender identity may or may not correspond to their assigned sex at birth or to their primary or secondary sex characteristics.” Gender Fluid is described as “someone whose gender identity is not fixed and may shift over time.” “Questioning” is defined as “someone who has not yet self-identified their sexual orientation, gender identity, gender expression, or some combination of the three.”

The policy requires that staff “respect the gender identity and gender expression of all students by honoring their right to be identified and addressed by their self-identified name

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² St. Paul Public Schools, “Gender Inclusion,” <https://www.spps.org/about/departments/equity/programming/out-for-equity/gender-inclusion-policy>



and pronouns. Staff will not refer to a student using their ‘dead name.’”

Finally, the policy requires schools to “[p]rovide all students the opportunity to socially transition during the timing and manner of which they choose.” “Information related to a student’s transition cannot be disclosed without consent of the student and/or family.”

In its “Gender Inclusion Procedures” document (Policy Procedure No. 500.00.01),³ St. Paul further requires that, “regardless of parental consent,” school district “[s]taff must honor the student’s preferred name and pronoun usage” and follow student preferences (after a private conversation) in addressing the student in “communications to the student’s parent(s)/legal guardians(s).” School officials are directed to notify parents only if a student permits it. From there, students have “access to facilities, including but not limited to, restrooms and locker rooms,” along with athletic teams and extracurriculars, that align with the student’s gender as listed in the District’s system. Likewise, students are roomed on overnight field trips with the same gender as listed in the District’s system.

President Trump’s Executive Orders prohibit federally funded K-12 schools from: failing to recognize that there are two sexes, male and female, which are not changeable and are grounded in fundamental and incontrovertible reality; undermining all-female athletic opportunities by allowing male competitive participation in women’s sports; allowing males into all-female locker rooms; and engaging in the “social transition” of a child, which includes modifying a person’s name or pronoun. St. Paul’s policy and procedures violate these Executive Orders.

The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information from parents about their children, including name and pronoun changes, allowing children to play sports against children of the other sex, and permitting use of bathrooms, locker rooms and

³<https://resources.finalsite.net/images/v1699022994/sppsorg/xavblsnx1ar4waw97ul9/5000001genderinclusionproceduresrevised-17-19.pdf>



other facilities of the other sex are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*

- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” *See West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

According to a March 2026 International Olympic Committee (IOC) Policy document, boys have “a performance advantage in all sports and events that rely on strength, power, and/or endurance.” *IOC Policy on the Protection of the Female (Women’s) Category in Olympic Sport* at 2.⁴ That’s because they have “larger and stronger skeletal muscle and bone, larger and stronger hearts, [and] larger lung size.” *Id.* The magnitude of the advantage is significant: they have a 20+% advantage in “most throwing and jumping events,” a 10-12% advantage in “most running and swimming events,” and a “greater than 100 per cent” advantage in “events that involve explosive power.” *Id.* at 3. That is why the International Olympic Committee, United States Olympic and Paralympic Committee, and the NCAA

⁴ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>



have all banned biological males from competing against biological females. *B.P.J.*, 143 SCt. at 2367.

Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; *see also* Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); *see also* 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

Attorney General Keith Ellison’s Legal Opinion to the MSHSL Is Not Persuasive or Binding on the District

You may have been counseled that a Legal Opinion from Minnesota Attorney General Keith Ellison to the Minnesota State High School League dated February 20, 2025 (“MSHSL Opinion”) requires a different reading of Minnesota law than outlined in the previous section. This is not the case.

First, General Ellison’s MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA’s gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls’ sports, or use girls’ bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23,

subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites to *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*'s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court's decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman's bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 SCt. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:

The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

Relevant to this matter, §8.07 provides that the Attorney General's Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court. To start with, given that General Ellison's letter is to the MSHSL, and not to the District, it does not bind you.

Second, the language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only "certain school matters," not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a "a nonprofit corporation that is a voluntary association of high schools." Minn. Stat.



§128C.01. Therefore, the Attorney General's MSHSL Opinion does not bind the MSHSL either. Thus, the MSHSL Opinion does not bind you, or any other school in Minnesota.

If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.

Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
St. Louis Park Public Schools
6300 Walker Street
St. Louis Park, MN 55426

Dear General Counsel:

I am writing with respect to what we assert are the St. Louis Park Public Schools (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Gender Inclusion” Policy No. 104 (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

In the Policy, “Gender Identity” is defined as an “a person’s deeply held sense or knowledge of one’s own gender, regardless of the sex assigned at birth.”² “Gender Expression” is defined as the “manner in which persons represent or express gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.” “Transgender” is an “umbrella term describing persons whose gender identity or expression is different from that traditionally associated with their sex at birth.”

The Policy provides that all students are allowed to participate in co-curricular and extracurricular activities and access all facilities “in a manner consistent with their gender identity. This includes but is not limited to intramural and interscholastic athletics.”

Students are allowed to request a change in their preferred name and pronouns without parental notification or consent.

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² <https://www.slpschools.org/who-we-are/policies-and-procedures/page/~board/policies/post/104-gender-inclusion>

The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information from parents about their children, including name and pronoun changes, are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive

fairness concerns that would arise if males were allowed to compete in female sports.” *See West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

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Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; *see also* Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); *see also* 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

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First, General Ellison’s MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See*

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Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA's gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

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Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*'s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court's decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman's bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 SCt. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:



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If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.



Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent Robbins".

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Moorhead Area Public Schools, ISD 152
1313 30th Avenue South
Moorhead, MN 56560

Dear General Counsel:

I am writing with respect to what we assert are the Moorhead Area Public Schools (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Guidelines for Supporting Student and Employee Gender Identity and Gender Expression” Policy No. 413.2 (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request for the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

In the Policy, “Gender Identity” is defined as including the claim that it is “a person’s deeply held sense or psychological knowledge of their own gender, regardless of the sex or gender assigned at birth.”² “Gender-expansive describes someone with a more flexible gender identity than might be associated with a typical gender binary.” The Policy also states that “Transgender/Trans describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.”

The Policy provides that students who claim to be Transgender can participate in interscholastic athletics, physical education classes, health education classes, and intramural sports and activities, restrooms, and locker rooms “consistent with their gender identity.” Participation on school trips are to be handled the same way.

Students are allowed to request a change in their preferred name and pronouns without parental notification or consent.

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

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The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

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- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information from parents about their children, including name and pronoun changes, are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
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It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

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According to a March 2026 International Olympic Committee (IOC) Policy document, boys have “a performance advantage in all sports and events that rely on strength, power, and/or endurance.” *IOC Policy on the Protection of the Female (Women’s) Category in Olympic Sport* at 2.³ That’s because they have “larger and stronger skeletal muscle and bone, larger and stronger hearts, [and] larger lung size.” *Id.* The magnitude of the advantage is significant: they have a 20+% advantage in “most throwing and jumping events,” a 10-12% advantage in “most running and swimming events,” and a “greater than 100 per cent” advantage in “events that involve explosive power.” *Id.* at 3. That is why the International Olympic Committee, United States Olympic and Paralympic Committee, and the NCAA have all banned biological males from competing against biological females. *B.P.J.*, 143 S.Ct. at 2367.

Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; see also Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); see also 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

Thus, under Minnesota law, school districts can and must provide separate sports teams, restrooms, locker rooms, and other similar places for boys and girls. The Policy violates these laws.

Attorney General Keith Ellison’s Legal Opinion to the MSHSL Is Not Persuasive or Binding on the District

You may have been counseled that a Legal Opinion from Minnesota Attorney General Keith Ellison to the Minnesota State High School League dated February 20, 2025 (“MSHSL Opinion”) requires a different reading of Minnesota law than outlined in the previous section. This is not the case.

³ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>

First, General Ellison's MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA's gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls' sports, or use girls' bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*'s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court's decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman's bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boys bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 SCt. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:



The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

Relevant to this matter, §8.07 provides that the Attorney General's Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court. To start, given that General Ellison's letter is to the MSHSL, and not to the District, it does not bind you.

Second, the language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only "certain school matters," not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a "a nonprofit corporation that is a voluntary association of high schools." Minn. Stat. §128C.01. Therefore, the Attorney General's MSHSL Opinion does not bind the MSHSL either. Thus, the MSHSL Opinion does not bind you, or any other school in Minnesota.

If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.



Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, which appears to read "Brent Robbins", is written over a horizontal line.

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
White Bear Lake Area Schools, ISD 624
2399 Cedar Avenue
White Bear Lake, MN 55110

Dear General Counsel:

I am writing with respect to what we assert are the White Bear Lake Area Public Schools (“the District” or “your”) violations of federal law, state law, and Presidential Executive Orders associated with your Policy No. 413A-Addendum C “Administrative Guidelines for Transgender and Gender-Expansive Student Rights and Protections” (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request to the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, and permitting the invasion of private spaces by the opposite sex. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League¹ for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

The District’s Gender Inclusion Policy Permits Boys to Violate Girl’s Spaces

In the Policy, “Gender Identity” is defined as including the claim that it is “a person’s deeply held sense or psychological knowledge of their own gender. A person’s gender identity can be the same or different from the sex or gender assigned at birth.” “Gender Expansive describes someone with a more flexible gender identity than might be associated with a gender binary.

The Policy provides that all students must have access to facilities, including bathrooms and locker rooms, that “corresponds to their gender identity asserted at school.”² Participation on school trips are to be handled the same way. With respect to high school sports, physical education classes, health education classes, and intramural sports and activities, students can select to join teams “in a manner consistent with their gender identity.”

The Policy Violates Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines

¹ *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>

² <https://www.isd624.org/about/district-policies/400-employees-personnel/413/addendumc>



how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” *See West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

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Additional support is found §121A.04, which requires schools “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; *see also* Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); *see also* 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus, sports teams restricted to biological women are not only permissible, but required by Minnesota law.

Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

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The MHRA sections cited by General Ellison do not address the specific issue here, which generally involves a biological boy who identifies as a girl seeking to play in girls’ sports, or use girls’ bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences

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Additionally, *N.H.* applied a simplistic "plain language" analysis to argue that failure to permit a biological girl to use the boys' bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boys' bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *Goins* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court's analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*'s holding. *B.P.J.*, 146 SCt. at 2375.

Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:

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An Opportunity Awaits

As the above analysis makes clear, the District’s Policy violates the federal law, Minnesota law, and the President’s Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota’s (www.makeitfairmn.com) effort to change the MSHSL’s policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.

Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports and preserve intimate spaces from unwarranted intrusion.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026



VIA EMAIL and US MAIL
September 29, 2026

General Counsel
Rosemount-Apple Valley-Eagan Public Schools, ISD 196
3455 153rd Street West
Rosemount, MN 55068

Dear General Counsel:

I am writing with respect to what we assert are the Rosemount-Apple Valley-Eagan Public School District (“the District” or “your”) violations of federal law, state law, the U.S. Constitution, and Presidential Executive Orders associated with your “Gender Inclusion” Policy No. 503.9AR¹ (the “Policy”). I am an attorney at the Upper Midwest Law Center, a Minnetonka-based law firm focused on providing *pro bono* legal representation to combat government overreach and constitutional violations, among other issues.

This letter constitutes a formal request to the District to rethink and change its damaging and illegal Policy with respect to sexual identity. Your Policy is harming students, putting girls at risk, permitting the invasion of private spaces by the opposite sex, and denying parents the right to support and love their children. This letter is also a caution. The Department of Justice has already sued the Minnesota Department of Education and the Minnesota State High School League² for similar issues, and we believe you are exposing yourself to significant legal risk by your flagrant and ongoing violations of federal and state law. I urge you to reverse course before the Policy does more damage to our children and before you expose your taxpayers to additional litigation risk.

**The District’s Gender Inclusion Policy Permits Boys
to Violate Girl’s Spaces and Infringe Parental Rights**

The District’s Policy defines “Gender Identity” as “a person’s deeply felt sense of being female, male a blend of both or neither.” The Policy describes “Transgender/Trans” as “individuals whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned sex at birth.”

The Policy asserts that “every student may request to be addressed by a name and pronoun that corresponds to the student’s gender identity.” Facility access, which “include[s] all restrooms, locker rooms or changing facilities” are available to students and will “correspond[] to their gender identity.” If a girl has a concern with sharing a locker room with a boy, then the Policy provides that she “may request to be provided with a reasonable alternative.” But the Policy does not indicate that such a request will be honored, just that she *may* make it.

The Policy allows boys to “fully” compete against girls in all “physical education classes and intramural athletics in a manner consistent with their gender identity.” Similarly, “students shall be permitted to participate in all school trips in a manner that corresponds with their

¹ Rosemount-Apple Valley-Eagan Public School District, 5039AR – *Gender Inclusion*, (October 2022), <https://www.district196.org/about/policies/policy/~board/policies/post/5039ar-gender-inclusion>

² *Department of Justice v. Minnesota Department of Education and the Minnesota State High School League*, 26-cv-02078 (D. Minn. 2026); <https://www.justice.gov/crt/media/1433251/dl>



gender identity.” The same applies to interscholastic sports: “[a]ll students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity as permitted the Minnesota State High School League.” Finally, students may request to be called by pronouns or names that do not align with their biological sex without parental knowledge or consent.

The Policy Violates the United States Constitution and Federal Law

On September 23, 2026, I sent a letter to Department of Education Assistant Secretary Kimberly Richey outlining the illegal and discriminatory sexual identity provisions of sixteen Minnesota school districts, including the Policy. *See Exhibit A*. This letter outlines how the Policy, along with fifteen other Minnesota School District policies, violate federal law in the following ways:

- By denying girls, contrary to Title IX of the Higher Education Act of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”), 1) the opportunity to play sports against other girls, instead allowing boys to play against them, denying those girls opportunities and endangering them; and 2) allowing boys to invade the private spaces of girls, including bathrooms, locker rooms, and even their own bedrooms during school-sanctioned field trips.
- Hiding social gender transitions from parents (including name and pronoun changes), in violation of parents’ longstanding right under the Fourteenth Amendment to the U.S. Constitution to “direct the care and upbringing of their children.” *See Mirabelli v. Bonta*, 607 U.S. 492, 496-498 (2026). There is no question that the portions of the Policy that hide information about sex transitions from parents are unconstitutional under *Mirabelli* and the Fourteenth Amendment. *Id.*
- By failing to follow three Executive Orders issued by President Donald J. Trump on January 20, 2025 (“Defending Women from Ideological Extremism and Restoring Biological Truth to the Federal Government”), January 29, 2025 (“Ending Radical Indoctrination in K-12 Schooling”); and February 5, 2025 (“Keeping Men out of Women’s Sports”).

It is well established that federal law is the “supreme law of the land” and preempts contrary state law. *See Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Therefore, even if Minnesota law requires the Policy that you have adopted (which, as you will see below, it does not), that law is preempted by federal law, which makes the Policy illegal.

The Policy Violates Minnesota Law

Minnesota law allows for separate sports teams, bathrooms, and locker rooms for girls and boys. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minn. Stat. §363A.24 provides a specific exemption from a general requirement for non-discrimination for separate “restrooms, locker rooms, and other similar places” by sex. §363A.24, Subd. 1. The same section permits athletic teams to maintain separate teams based on biological sex so long as it “is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.” §363A.24, Subd. 2. Thus, the MHRA contains a clear statement that separate sports teams and private spaces based on biology are not discriminatory.

Minnesota’s directive in favor of sports teams separated by sex is consistent with biology, common sense, and the scientific consensus. It is widely understood by the general public and scientific research that there are “inherent physical differences between biological men and biological women” and people are rightly concerned by the “safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” See *West Virginia v. B.P.J.*, 609 U.S. ____; 146 S.Ct. 2356, 2371 (2026). Additionally, because sports is a competitive activity, allowing biological boys to play against girls “necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like. That hard reality of sports cannot be ignored or swept under the rug.” *Id.* at 2372.

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Finally, in case there was any confusion, the Legislature stated that: “Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex. . .” Minn. Stat. §363.23, subd. 2.

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³ <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/EB/policy/policy-on-the-protection-of-the-female-category-english.pdf>



First, General Ellison’s MSHSL Opinion is legally incorrect. The primary basis for his opinion is the existence of statutory protections for gender identity under the MHRA. *See* Minn. Stat. §363A.03, subd. 1, 13, 50. While such protections exist, they do not decide the issue at hand. The MHRA’s gender identity protections simply prohibit discrimination against those who claim to have a different sexual identity than their biological sex. So, for instance, a prohibition on a transgender student participating in athletics or the debate team would be illegal.

The MHRA sections cited by General Ellison do not address the specific issue here, which generally involve a biological boy who identifies as a girl seeking to play in girls’ sports, or use girls’ bathrooms, locker rooms, or sleeping areas. A rule that, for reasons of safety, privacy, and fairness, protects biological girls from having their intimate spaces invaded by, or participating against, biological boys, is not discrimination. Instead, as the IOC noted in its report, it is based on the reality that boys are different from girls, and those differences have practical and important effects in the bathroom, in the locker room, and on the playing field.

Not only is this logically and biologically obvious, it is supported by Minnesota law, as outlined above. The MHRA contains an explicit statement that it is not a discriminatory practice for schools to sponsor separate sports team based on sex. Minn. Stat. §363.23, subd. 2; *see also* Minn. Stat. 121.04. Nor is it a discriminatory practice to have sex separated bathrooms, locker rooms, or other similar facilities. Minn. Stat. §363.24, subd. 2.

General Ellison cites to *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) in support of his Legal Opinion. *N.H.* is a Minnesota Court of Appeals decision that held that a public school must permit a transgender student to use bathrooms of the other biological sex. *N.H.* was wrongly decided and is an outlier. *N.H.*’s first mistake, as the *N.H.* dissent noted, was that it failed to follow the Minnesota Supreme Court’s decision in *Goins v. West Group*, 653 N.W. 717 (Minn. 2001), where the court held that it was not discriminatory for employers to bar a transgender man from using the woman’s bathroom. 653 N.W. 2d at 725. The same logic should apply in schools.

Additionally, *N.H.* applied a simplistic “plain language” analysis to argue that failure to permit a biological girl to use the boy’s bathroom was *per se* discrimination. The appellate court did not even consider the point that excluding a girl from a boy’s bathroom might not rest on discriminatory intent, but out of concerns for privacy and modesty. Nowhere does the MHRA explicitly require bathrooms or locker rooms to be shared by males and females. The only time the MHRA mentions the issue is to affirmatively state that such a practice is not required in the public accommodations setting. Minn. Stat. §363.24, subd. 2.

Subsequent to *N.H.*, not only has the Minnesota Supreme Court declined to overturn *Goins* (despite *N.H.* being prominently briefed and cited by the Supreme Court in *Cooper v. USA Powerlifting*, 26 N.W. 3rd 604 (Minn. 2025)), but no other court has cited it with respect to the transgender issues. Further, the U.S. Supreme Court’s analysis in *B.P.J.* definitively rejected the argument that drawing distinctions based upon biology is inherently discriminatory (as *N.H.* errantly found) and approved separate treatment of boys and girls in the appropriate circumstance, eviscerating *N.H.*’s holding. *B.P.J.*, 146 S.Ct. at 2375.



Finally, General Ellison referenced Minn. Stat. §8.07 in the MSHSL Opinion. §8.07 states as follows:

The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

Relevant to this matter, §8.07 provides that the Attorney General's Opinion to attorneys of a school district or the Commissioner of Education are binding unless otherwise decided by a court. To start with, given that General Ellison's letter is to the MSHSL, and not to the District, it does not bind you.

Second, the language of §8.07 is clear that the Attorney General does not have full and plenary authority to issue legal opinions on all school-related subjects to all school-related entities. Indeed, the courts have stated that only "certain school matters," not all, are covered by §8.07. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W. 2d 885, 891 (Minn. Ct. App. 2012). The MSHSL is not a school district or other entity covered by §8.07—instead, it is a "a nonprofit corporation that is a voluntary association of high schools." Minn. Stat. §128C.01. Therefore, the Attorney General's MSHSL Opinion does not bind the MSHSL either. Thus, the MSHSL Opinion does not bind you, or any other school in Minnesota.

If you believe otherwise, §8.07 makes clear that the Attorney General's opinion can be overturned by the Minnesota Supreme Court, which has done so on numerous occasions. *See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004) (declining to follow attorney general opinion). Therefore, if necessary, the District should file an action seeking to overturn General Ellison's MSHSL Opinion.

An Opportunity Awaits

As the above analysis makes clear, the District's Policy violates the U.S. Constitution, federal law, Minnesota law, and the President's Executive Orders. You should take immediate steps to address this issue to avoid future harm and liability. One practical way for you to do this would be to join Make it Fair Minnesota's (www.makeitfairmn.com) effort to change the MSHSL's policies that require member schools to allow students who wish to adopt a different sexual identity to play against those of the opposite sex.



Additionally, I strongly encourage you to change your Policy to address the issues in this letter. By eliminating the Policy, you will provide equal opportunity for girls in sports, preserve intimate spaces from unwarranted intrusion, and uphold the rights of parents as the primary caregiver for their children.

I would welcome the opportunity to meet and discuss this matter with you if you would like.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent Robbins".

Brent Robbins
Senior Counsel, Religious Liberty
Upper Midwest Law Center

Enclosure: Letter to Kimberley Richey, Assistant Secretary, Office of Civil Rights,
Department of Education, dated September 23, 2026

Exhibit A

U.S. Department of Education

[HOME](#) / [ABOUT US](#) / [NEWSROOM](#) / [PRESS RELEASES](#)**PRESS RELEASE**

U.S. Department of Education Launches Title IX Investigations into Two Athletic Associations

Office for Civil Rights Directed Investigations Into Two Athletic Associations, Both of Which Publicly Announced Plans to Violate Federal Antidiscrimination Laws Related to Girls' and Women's Sports.

FEBRUARY 12, 2025

The U.S. Department of Education's Office for Civil Rights (OCR) today announced directed investigations into the Minnesota State High School League (MSHSL) and the California Interscholastic Federation (CIF), both of which publicly announced plans to violate federal antidiscrimination laws related to girls' and women's sports. This includes the possibility of allowing male athletes to compete in women's sports and use women's intimate facilities.

"The Minnesota State High School League and the California Interscholastic Federation are free to engage in all the meaningless virtue-signaling that they want, but at the end of the day they must abide by federal law," **said Acting Assistant Secretary for Civil Rights Craig Trainor**. "OCR's Chicago and San Francisco regional offices will conduct directed investigations into both organizations to ensure that female athletes in these states are treated with the dignity, respect, and equality that the Trump Administration demands. I would remind these organizations that history does not look kindly on entities and

states that actively opposed the enforcement of federal civil rights laws that protect women and girls from discrimination and harassment.”

President Trump’s Executive Order, [Keeping Men Out of Women’s Sports](#), states that “it is the policy of the United States to rescind all funds from educational programs that deprive women and girls of fair athletic opportunities,” and to take “all appropriate action to affirmatively protect all-female athletic opportunities and all-female locker rooms and thereby provide the equal opportunity guaranteed by Title IX of the Education Amendments Act of 1972.”

Last week, OCR [launched](#) directed investigations into San Jose State University, the University of Pennsylvania, and the Massachusetts Interscholastic Athletic Association for reported violations of Title IX. OCR also made it clear that they are reviewing athletic participation policies at a number of schools to evaluate their compliance with Title IX protections for female athletes.

Background Information on the Directed Investigations:

In a public statement released after President Trump signed his Protecting Women’s Sports Executive Order, [MSHSL](#) and [CIF](#) announced their intentions to abide by state law as it relates to girls’ and women’s sports in violation of federal antidiscrimination laws. Both state laws allow athletes to participate on teams based on an individual’s subjective gender identity rather than biological sex, even though biological sex is the basis for Title IX protections. State laws do not override federal antidiscrimination laws, and these entities and their member schools remain subject to Title IX and its implementing regulations.

CONTACT

Press Office | press@ed.gov | (202) 401-1576 | Office of Communications and Outreach (OCO)

Office of Communications and Outreach (OCO)

Page Last Reviewed: February 12, 2025

Related Content

U.S. Department of Education Releases Statement on Maine's Title IX Compliance

The U.S. Department of Education's Acting Assistant Secretary for Civil Rights Craig Trainor released a statement about Maine's compliance with Title IX today.

FEBRUARY 26, 2025

U.S. Department of Education Employees Return to Work

Today, in compliance with President Trump's memorandum for federal employees to return to in-person work, the U.S. Department of Education welcomed back over 70% of its total workforce to employees' designated duty stations in Washington and elsewhere.

FEBRUARY 24, 2025

Office for Civil Rights Launches Title IX Violation Investigations into Maine Department of Education and Maine School District

The Office for Civil Rights announced that it is initiating a directed investigation of the Maine Department of Education amid allegations that it continues to allow male athletes to compete in girls' interscholastic athletics.

FEBRUARY 21, 2025

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Exhibit B

Policy 500.00
GENDER INCLUSION

I. PURPOSE

This policy addresses the inequities some students, including intersex, transgender, gender fluid, questioning, gender queer, gender diverse, and gender creative students, confront as they navigate a system designed using a cisgender, binary model.

II. GENERAL STATEMENT OF POLICY

The students of Saint Paul Public Schools (SPPS) deserve respectful and inclusive learning environments that foster a sense of belonging and respect their gender identity and gender expression. SPPS ensures that all students have access to programming and facilities in which they feel comfortable, safe, supported, included, and empowered.

III. DEFINITIONS

- A. **Gender** refers to the socially constructed roles, behaviors, activities, and attributes that a given society attaches to femininity or masculinity.
- B. **Gender Binary** refers to the social construction of a gender dichotomy between masculinity and femininity. The gender binary often ignores or denigrates alternate gender constructions.
- C. **Gender Expression** refers to the manner in which persons represent or express gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.
- D. **Gender Identity** refers to a person's inherent sense of being a man, woman, both, or neither. A person's gender identity may or may not correspond to their assigned sex at birth or to their primary or secondary sex characteristics. A person's gender identity is not necessarily visible to others.
- E. **Gender Fluid** is a term that refers to someone whose gender identity is not fixed and may shift over time.
- F. **Questioning** is a term that refers to someone who has not yet self-identified their sexual orientation, gender identity, gender

expression, or some combination of the three.

- G. **Gender Diverse** is an umbrella term that refers to someone who identifies and/or expresses themselves outside of the gender binary. Their gender identity and/or expression may not fit neatly into a category based on stereotypical gender constructs.
- H. **Gender Creative** is an umbrella term that refers to someone who is exploring their gender identity beyond their assigned gender at birth and/or the gender binary in ways that are authentic to them. It may also be a term to identify their gender outside of stereotypical gender constructs.
- I. **Gender Queer** is an umbrella term that refers to someone who does not follow binary gender norms.
- J. **Cisgender** refers to someone whose gender identity matches the sex they were assigned at birth.
- K. **Sex** refers to a person's biology and is generally categorized as male, female, or intersex.
- L. **Intersex** is an umbrella term that refers to people who are both with variations in sex traits or reproductive anatomy. There are a wide variety of differences among these traits, which might not fit inside stereotypical assumptions of male or female bodies. These variations include internal and/or external anatomy, hormones or chromosomes.
- M. **Transgender** is an adjective describing persons whose gender identity or expression is different from the sex they were assigned at birth.
- N. **Transitioning** refers to the process of someone making changes to live according to their gender identity, also known as gender affirmation. The process of transitioning, or affirming one's gender identity, may look different for everyone. The process may include a "coming out" period where information is shared with others; name, pronoun and/or gender updates to legal documentation; and various types of medical procedures/treatments. Transitioning may include processes not listed above.

IV. ENSURE GENDER INCLUSIVENESS

SPPS staff and systems ensure equitable and inclusive access to programming and facilities. In accordance with procedure, the District will:

- A. Respect the gender identity and gender expression of all students' by honoring their right to be identified and addressed by their self-identified name and pronouns. Staff will not refer to a student using their "dead name."
- B. A Student Support Team may meet to determine a Student Support Plan. The Student Support Team will consist of the student, parent(s) or legal guardian(s) when possible, a school counselor, a school social worker, and the principal or the principal's administrative designee. The student may also invite an additional adult advocate(s) to the team, if they feel the support would be beneficial.
- C. Within academic programming, prohibit the separation of students and/or curricular materials based upon perceived gender unless it serves as a compelling pedagogical tool.
- D. Provide all students the opportunity to participate in co-curricular and extracurricular activities in a manner consistent with their gender identity, including but not limited to intramural and interscholastic athletics.
- E. Provide all students with access to facilities that best align with students' gender identity, and/or the facilities the student feels safest accessing.
- F. Provide all students the opportunity to socially transition during the timing and manner of which they choose. Administrators and staff will respect the right of the students and families to disclose information regarding this confidential and private process. Information related to a student's transition cannot be disclosed without consent of the student and/or family.

LEGAL REFERENCES:

Minn. Stat. ch. 363A (Minnesota Human Rights Act)
Minn. Stat. § 121A.031 (Safe and Supportive Minnesota Schools Act) Minn. Stat. § 121A.03, subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)
Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)
20 U.S.C. § 1681 et seq. (Title IX)
20 U.S.C. § 1701 et seq. (Equal Educational Opportunities)
U.S.C. Amend.XIV § 2 (Equal Protection Clause of the 14th Amendment)

CROSS REFERENCES TO DISTRICT POLICIES:

102.00 Equal Opportunity/Non-Discrimination
415.00 Harassment, Violence and Other Offensive Behavior
501.03 Student Dress Code
505.00 Bullying Prohibition

500.00.01 Gender Inclusion

Saint Paul Public Schools ("District") commits to supporting and maintaining - learning environments that value students' gender identity and gender expression. The District's Gender Inclusion Policy and procedures work to ensure that all students have access to programming and facilities in which they feel comfortable and safe.

- 1. Respect all students' gender identity and gender expression by honoring the right of students to be identified and addressed by their preferred name and pronoun.**
 - a. Staff expectations
 - i. Staff must honor the student's preferred name and pronoun usage regardless of whether the District's student information system has been updated under paragraph 1b.
 - ii. Upon written or oral request from a student and regardless of parental consent, a student is to be addressed in classes, announcements, and other school gatherings by the name and/or pronoun requested by the student, unless the student's principal determines that the use of a particular name or pronoun would be patently offensive.
 - iii. Upon written or oral request from a student and regardless of parental consent, staff must update District usages of the student's name in school community spaces that are visible to other students, staff, and families including, but not limited to, on bulletin boards, lockers, cubbies, folders, materials, and use of the student's name in digitally viewable spaces including District managed email and online learning environments such as Schoology.
 - iv. Upon written or oral request from a student and regardless of parental consent, staff must update usage of the student's name in digitally viewable spaces including District managed email and online learning environments such as Schoology.
 1. Changes to District managed digital systems can be requested by submitting a custom ticket to IT. See attachment A. for more information about the custom ticket.
 2. A counselor, social worker, principal or other designee must consult with the student to inform them of implications of the change.
 3. A counselor, social worker, principal or other designee will record the student's name in the "nickname" field on Campus.

4. A counselor, social worker, principal or other designee will notify teachers and staff working with the student of the student's name change. See Attachment B
5. A communication is to be sent home to notify the student's parent(s)/guardian(s) of the name change, see Attachment C., unless the student expresses safety concerns from such a notification. In those cases, see section 5 – Student Support Plan, for guidance.
6. Changes may be made once annually or at the discretion of the principal or administrative designee.
- v. Staff must privately ask students who have identified themselves as transgender or gender variant how they want to be addressed in communications to the student's parent(s)/legal guardian(s). For purposes of this procedure, communications include, but are not limited to, materials sent to the student's home and how the student is referred to at conferences with the student's parent(s)/legal guardian(s).
- vi. For communications with a student's parent(s)/legal guardian(s), staff must use the student's name as listed in the District's student information system, unless specifically told otherwise by the student or parent(s)/guardian(s).
- vii. Inadvertent, honest mistakes in the use of a student's preferred name or pronoun may occur. The intentional and persistent refusal to respect a student's gender identity or gender expression may be considered discriminatory and is subject to disciplinary measures.

b. Modifying Student Records

- i. A student's name and/or gender, as listed in the District's student information system, must be modified in accordance with a completed Name and Gender Change Request form. The form may be obtained from the student's principal, on the District website, or at the Student Placement Office. The form must be submitted to the student placement office, the student's principal or the principal's administrative designee.
 1. The form will include the following change options:
 - a. Student's name,
 - b. Student's gender,
 - c. Student's District alternate gender,
 - d. Student's gender pronoun,
 - e. Student's access to gender-specific facilities,
 - f. Student's extra and/or co-curricular activities participation, and
 - g. A notice that the District's acceptance of the form does not constitute a legal name or gender change and only constitutes a request to change the

student's name and/or gender in the District's records.

2. Students under 18 must complete the form with parent/guardian consent.
 3. Students age 18 or older may complete the form without parent/guardian consent.
 4. The form may be updated annually or at the discretion of the principal or administrative designee.
 - ii. A portion of the District's student information system will include sections for the student's District alternate gender, gender pronoun, access to gender-specific facilities, and extra and/or co-curricular activities participation. These elements must be updated upon receipt of a completed name and gender change form.
 - iii. The District's student information system will reflect options to meet the needs of students who identify outside of the gender binary.
2. **Within academic programming, prohibit the separation of students and/or curricular materials based upon gender unless it serves as a compelling pedagogical tool.**
 - a. Arbitrary separation of students and/or curricular materials based upon sex and/or gender is prohibited.
 - i. Prohibited separation includes, but is not limited to:
 1. Boys vs. girls competition;
 2. Developing, classifying, or labeling materials, such as book bins, as boy or girl specific; and
 3. Lining up students according to sex and/or gender.
 - ii. Permissible separation includes, but is not limited to:
 1. Sex education classes;
 2. Gender-based affinity groups; and
 3. Lining up students by sex and gender to access gender separated restrooms and/or locker room facilities that are not adjacent to each other.
 - b. To determine whether there is a compelling pedagogical tool justifying separation of students and/or curricular materials, staff will reflect and provide, upon request, the reasoning behind any gender based separation.
 - c. In any permissible separation or grouping by sex and/or gender, individual students must be afforded the opportunity to select the group that best aligns with the student's gender identity or expression.
3. **Provide all students the opportunity to participate in co-curricular and extracurricular activities in a manner consistent with their gender**

identity, including, but not limited to, intramural and interscholastic athletics.

- a. Eligibility shall be determined according to the District's student information system.

4. Provide all students access to facilities that best align with students' gender identity.

- a. Students shall have access to facilities, including but not limited to, restrooms and locker rooms, that best align with a student's gender as listed on the District's student information system.
- b. Students shall be roomed on overnight field trips, for which students will be separated based on gender, with other students of their same gender as listed on the District's student information system.

5. Student Support Plan

- a. A Student Support Plan is available to any student who due to extraordinary circumstances cannot reasonably obtain guardian consent to modify student records and/or expresses a good-faith desire for increased privacy and/or safety. A student support team consisting of the student, an adult advocate of the student's choice, and the student's principal or the principal's administrative designee will meet to determine a Student Support Plan addressing, among other things, participation in co-curricular and extracurricular activities, and access to facilities, including but not limited to restroom and locker room access.

- i. Restroom Accessibility

1. Details of the student support plan may include, among other things:

- a. Use of a gender neutral restroom;
 - b. Use of a health/nurse/office restroom; and/or
 - c. Any other plan agreeable to the student support team.

- ii. Locker Room Accessibility

1. Details of the student support plan may include, among other things:

- a. Use of a private area within the public area of the locker room facility (i.e. a nearby restroom stall with a door, an area separated by a curtain, or a P.E. instructor's office);
 - b. A separate changing schedule utilizing the locker room before or after other students;
 - c. Use of a nearby private area such as a nearby restroom or a health/office restroom; or
 - d. Any other plan agreeable to the student support team.

- b. All student support plan information is private data in accordance with the Minnesota Data Practices Act and the Family Educational Rights and Privacy Act.

6. Professional Development

- a. The District will offer professional development opportunities for staff, including but not limited to, teachers, administrators, counselors, social workers, and health staff.
- b. Professional development opportunities are intended to improve the knowledge, will, skill, and capacity of all District staff to prevent, identify, and respond to bullying, harassment, discrimination, violence, or any other marginalizing action. The content of such professional development may include, but is not limited to:
 - i. Terms, concepts, and current developmental understandings of gender identity, gender expression, and gender diversity in children and adolescents;
 - ii. Developmentally appropriate strategies for communication with students and parents about issues related to gender identity and gender expression that protect student privacy;
 - iii. District policies and procedures regarding, bullying, harassment, discrimination, violence, or any other marginalizing action based upon gender identity and/or expression;
 - iv. District Rights and Responsibilities handbook and
 - v. Data privacy laws, and District policies, and procedures.

LEGAL REFERENCES:

Minn. Stat. ch. 13 (Minnesota Government Practices Act)
Minn. Stat. § 121A.03, subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)
Minn. Stat. § 121A.031 (Safe and Supportive Minnesota Schools Act)
Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)
Minn. Stat. ch. 363A (Minnesota Human Rights Act)
20 U.S.C. § 1681 et seq. (Title IX)
20 U.S.C. § 1701 et seq. (Equal Educational Opportunities)

CROSS REFERENCES TO DISTRICT POLICIES:

500.00 Gender Inclusion
102.00 Equal Opportunity/Non-Discrimination
505.00 Bullying Prohibition

ATTACHMENT A: IT TICKET PROCESS FOR UPDATING NAME

The custom ticket will include the following fields:

- Brief statement that first name in account is being changed related to consistent gender identity. Last name may not be changed.
- Statement that student has been offered the Name/Gender Change Request Form and is unable to return it at this time. Staff should continue to work with student towards this as it provides the greatest support for student.
- Statement that student has been counseled and is aware that peers and their parent/guardian may be able to see this change.
- Statement that building Principal has been notified that student's Schoology and Google Apps email address will be changed.
- Statement that family has been notified of change via email or phone and a written note has been sent home with the student, unless there is a safety concern.
- Current full student name + Active Directory number (lunch number) + SPPS Google Apps email address (@stpaul.k12.mn.us)
- New name for student SPPS Apps email address (name that will appear on iPad)
- Current Schoology First Name:
- New Schoology First Name:

See Gender Inclusion Policy for more information and for Name/Gender Change Request Form. www.spps.org/genderinclusion

Contact Out for Equity with questions, outforequity@spps.org or 651-744-6095.

ATTACHMENT B: TEMPLATE PARENT/GUARDIAN NOTIFICATION

Dear colleagues:

I would like you to be aware that OLD FIRST AND LAST NAME prefers to be called NEW FIRST NAME. This name is reflected as the student's nickname in Campus. From now on, please use the pronouns SPECIFY (E.G., HE/HIM/HIS) when addressing NEW FIRST NAME.

Please use NEW FIRST NAME in all verbal, written, and digital spaces at school.

Please continue to use OLD FIRST NAME when contacting home to support the student and family.

Please let me know if you have any questions.

Example letter.

Dear colleagues:

I would like you to be aware that Jordyn Smyth prefers to be called Cindy. This name is reflected as the student's nickname in Campus. From now on, please use the pronouns They/Them/Theirs when addressing Cindy. The student's parents/guardians have been informed.

Please use Cindy in all verbal, written, and digital spaces at school.

Please continue to use Jordyn when contacting home to support the student and family.

Please let me know if you have any questions.

ATTACHMENT C: TEMPLATE PARENT/GUARDIAN NOTIFICATION

As part of the ticketing process for changing names in District managed systems, a notification should be given to the student's parent(s) or guardian(s). A template of suggested information to be shared in the phone call, email, or letter is below.

By request of your student, your student's email address and Schoology name have been updated to _____.

If you have questions, please contact (STAFF NAME SUBMITTING TICKET OR PRINCIPAL).

Exhibit C

INDEPENDENT SCHOOL DISTRICT 196
Rosemount-Apple Valley-Eagan Public Schools
Educating our students to reach their full potential

Series Number 503.9AR Adopted August 2021 Revised October 2022

Title **Gender Inclusion**

1. **PURPOSE** – All students need a safe and supportive school environment in which to learn. The purpose of this regulation is to foster an educational environment that is safe, supportive and free from discrimination for all students, regardless of gender identity or gender expression, and to facilitate compliance with local, state, and federal laws concerning nondiscrimination.
2. **DEFINITIONS** - The following definitions are provided to assist in understanding this regulation. The definitions provided below are not intended to label or limit individual identities or experiences. Students may or may not use these terms to describe themselves and terminology may differ between cultures.
 - 2.1 "Gender identity" means a person's internal, deeply felt sense of being female, male, a blend of both or neither. The term refers to how individuals perceive themselves and what they call themselves and it can be the same as or different from their sex assigned at birth.
 - 2.2 "Gender expression" means the external appearance of one's gender identity, usually expressed through behavior, clothing, hair or voice, which may or may not conform to socially defined behaviors and characteristics typically associated with being either feminine or masculine.
 - 2.3 "Transgender" is an umbrella term for individuals whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation.
 - 2.4 "Cisgender" means a person whose gender identity aligns with the sex assigned to them at birth.
 - 2.5 "Non-Binary" means a person who does not identify exclusively as female or male.
 - 2.6 "Gender Expansive" means individuals that broaden commonly held definitions of gender, including expectations for its expression, identities, roles, and/or other perceived gender norms. Gender-expansive individuals include those with transgender and non-binary identities, as well as others whose gender expression does not conform to socially defined behaviors and characteristics typically associated with being either feminine or masculine.
3. **SCOPE** - This regulation covers conduct that takes place in the school, on school property, at school-sponsored activities and events, during school video conferencing, on school buses or vehicles and at bus stops and school parking areas. This includes conduct carried out through the use of electronic technology and electronic communication. This regulation applies to the entire school community, including educators, school district staff, students, parents, and volunteers.

4. **BULLYING, HARASSMENT, AND DISCRIMINATION PROHIBITION** - Discrimination, bullying, and harassment on the basis of gender identity or expression are prohibited within the school district. Each school and all staff are responsible to ensure that all students, including transgender and gender expansive students, have a safe school environment. The scope of this responsibility includes ensuring that any incident of discrimination, bullying, or harassment based on a person's actual or perceived gender identity or expression are to be taken seriously and handled in the same manner as other discrimination, bullying, or harassment complaints and consistent with applicable school district policies and regulations pertaining to discrimination, bullying and harassment. A family and/or student may request that school officials identify one or more District 196 staff members that the student can access if they require additional support during the school day.
5. **PRIVACY**
 - 5.1 All students have a right to privacy, and this includes the right to keep one's transgender status private at school. The school district will maintain the privacy of information relating to transgender and gender expansive students in accordance with applicable local, state, and federal privacy laws. School staff shall not disclose information that reveals a student's transgender status to others unless legally required to do so or when written permission has been given. School staff access to this information is on a strict, need-to-know basis consistent with district regulations regarding the privacy of student records.
 - 5.2 Transgender and gender expansive 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. The fact that a student chooses to disclose his or her transgender status to staff or other students does not authorize school staff to disclose other private information about the student.
6. **NAMES, PRONOUNS AND RECORDS** - Every student may request to be addressed by a name and pronoun that corresponds to the student's gender identity. The school shall maintain a mandatory permanent student record that includes a student's legal name and legal gender, however, to the extent that the school is not legally required to use a student's legal name and gender on other unofficial school records or documents, the school shall use the name and gender provided by the student. Upon written request of the student and their parent(s) or guardian(s), the student name and gender will be changed on the school district's digital student information system and on unofficial school records and documents to the extent possible to align with their gender identity, while still maintaining the legal name and gender for required purposes. Parent request is not required for an 18-year-old student who wishes to change their name and/or gender on the school district's digital student information system and on unofficial school records and documents. Medical documentation or legal verification of a student's name or gender change is not required. The school will change a current student's official record to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order, or through amendment of state or federally issued identification.
7. **ACCESS TO FACILITIES, INCLUDING RESTROOMS, LOCKER ROOMS AND CHANGING AREAS** - With respect to facilities, including all restrooms, locker rooms or changing facilities, students will have access that corresponds to their gender identity. Schools may maintain separate restroom, locker room, and changing facilities for male and female students. For any gender-segregated facility, any student, of any gender identity who is uncomfortable using a shared facility may request to be provided with a reasonable alternative.

8. **PHYSICAL EDUCATION CLASSES AND INTRAMURAL AND INTERSCHOLASTIC ATHLETICS** - All students shall be permitted to fully participate in physical education classes and intramural athletics in a manner consistent with their gender identity. All students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity as permitted by the Minnesota State High School League.

9. **OTHER GENDER-BASED ACTIVITIES, RULES, POLICIES AND PRACTICES** – While some activities will continue to be gender-based (e.g., athletics, choir), as a general matter, schools should evaluate all gender-based activities, rules, policies, and practices including, but not limited to, classroom activities, school ceremonies, and school photos. To the extent practicable, students shall be permitted to participate in any such activities or conform to any such rule, policy, or practice consistent with their gender identity.

All students, regardless of their gender identity, have the right to participate fully in overnight trips and other activities. Student accommodations on overnight trips shall be consistent with their gender identity.

10. **DRESS CODE** - Schools may enforce dress codes, however, 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 expansive students than other students.

11. **PUBLICATION** - This regulation will be referenced in the annual Overview of Student Rights and Responsibilities and posted on the school district website. School district employees will receive notice of this regulation to ensure they understand their responsibilities under the regulation.

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- References:**
- Minnesota Statute § 121A.04 (Athletic Programs; Sex Discrimination)
 - Minnesota Statute Ch. 363A (Minnesota Human Rights Act)
 - 20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972); 34 C.F.R. Part 106 (Implementing Regulations of Title IX)
 - 503.4AR, Harassment, Discrimination, Violence or Hazing
 - 503.8AR, Bullying Prohibition

Exhibit D

Policy 5025: Gender Inclusion

1. PURPOSE AND GENERAL STATEMENT OF POLICY

The students and staff of Minneapolis Public Schools (MPS) deserve respectful and inclusive learning environments that value students' gender identity and gender expression. MPS ("District") ensures that all students have access to programming and facilities in which they feel comfortable, supported, and safe. This policy addresses the inequities some students, including intersex, transgender, two-spirit, gender expansive, non-binary, and gender-questioning students, confront as they navigate a system designed using a gender binary model. This policy does not and cannot anticipate every situation that may occur, as every student is unique. The support for each student must be assessed and addressed individually based upon the student's specific requests and needs.

2. DEFINITIONS

The definitions contained in this policy are not intended to label students, but rather to assist in understanding this policy and the legal obligations of district staff. It is recognized that students might or might not use these terms to describe themselves.

- a. "Gender" refers to the socially constructed roles, behaviors, activities, and attributes that a given society attaches to femininity or masculinity.
- b. "Gender Identity" is a person's deeply held sense or psychological knowledge of their own gender. A person's gender identity can be the same or different from the sex or gender assigned at birth.
- c. "Sex Assigned at Birth" refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- d. "Gender Expression" refers to the manner in which a person represents or expresses that person's gender identity to others, often through behavior, clothing, hairstyles, activities, or mannerisms. Although transgender people typically seek to make their gender expression match their gender identity, rather than their sex assigned at birth, gender expression may or may not conform to a person's gender identity.
- e. "Gender Expansive" is an umbrella term that is used to describe individuals whose gender expression, gender identity, or gender role is fluid and/or may differ from gender norms associated with their sex assigned at birth. This term also includes people who identify outside of traditional gender categories or identify as both or several genders. Other terms that can have a similar meaning include "gender diverse," "gender non-conforming," "genderqueer," and "nonbinary."
- f. "Transgender/Trans" describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth. Transgender identity is not dependent on medical procedures or other physical changes.
- g. "Transition" refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth.

3. PRIVACY

- a. The privacy of student data is governed by MPS Policy 5690, which incorporates the Minnesota Government Data Practices Act and the Family Educational Rights and Privacy Act. Virtually all student data are private, including student gender identity and information relating to a student's transgender or gender expansive status. Private student data are accessible only to 1) the student who is the subject of the data, 2) their parent or guardian, 3) MPS employees, contractors, and volunteers whose work

assignment reasonably requires access and who have a legitimate educational interest, and 4) other parties or entities as provided for in section 6 of MPS Policy 5690. The District cannot withhold any private student data requested by the student's parent or caregiver unless there exists a court order which specifically denies access to the data.

- b. It does not violate student data privacy to call a student by their updated name or refer to them by their updated pronouns, either orally or in writing. Nor does it violate student data privacy to share a student's updated name and pronouns with others, including MPS employees, contractors, volunteers, and students, for the purpose of ensuring that the appropriate name and pronouns are used when communicating with or about the student.
- c. A student may choose to openly discuss and express their gender identity and gender expression or they may choose not to do so. In the classroom and other group settings, it is the student's prerogative to broach the subject.
- d. All rights and protections given to parents under MPS Policy 5690 transfer to the student when he or she reaches eighteen (18) years of age or enrolls in an institution of post-secondary education. The student then becomes an "eligible student." However, the parents of an eligible student who is also a "dependent student" are entitled to gain access to the education records of such student without first obtaining the consent of the student. In addition, parents of an eligible student may be given access to education records in connection with a health or safety emergency if the disclosure meets the conditions of any provision set forth in 34 C.F.R. § 99.31(a).

4. OFFICIAL SCHOOL RECORDS

- a. The school district is required to maintain a mandatory and permanent student record ("official record") that includes a student's legal name and gender. The school district will change a student's official record to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order or other official government action.
- b. Pertaining to students of all grades: At the request of a transgender or gender expansive student, and/or their parent/guardian the District will use the student's requested name, gender identity, and pronouns when referring to the student in education records.

5. STUDENT NAMES, PRONOUNS, AND GENDER MARKERS

- a. At the student's and/or parent's/guardian's request, a transgender and/or gender expansive student in all grades has the right to be referred to at school by a name and pronouns that align with their gender identity. At the parent's/guardian's request, a transgender or gender expansive student in all grades has the right to be referred to at school by a name and pronouns that align with the student's gender identity.

6. GENDER-SEGREGATED FACILITIES

All students shall have access to gendered facilities and school-sponsored programs that are consistent with the student's gender identity. This includes, but is not limited to, multi-stalled gendered restrooms, locker rooms, and school programs, trips, and athletic programs.

- a. *Restroom Accessibility*
Pursuant to Minn. Stat. 363A.13, subd. 1 (N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020)) students shall have access to the restroom that corresponds to their gender identity asserted at school:
 - i. Any student who has a need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason

for the student's need or desire for increased privacy, should be provided access to a single-user restroom.

- ii. No student shall be required to use a single-user restroom because they are transgender or gender expansive
- iii. The District shall work with each transgender and gender expansive student to determine which restrooms are most comfortable for the student.
- iv. In no case shall any student be required to use a restroom that conflicts with the student's gender identity

b. *Locker Room Accessibility*

Pursuant to Minn. Stat. 363A.13, subd. 1 (N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020)), the use of locker rooms by transgender and gender expansive students shall be assessed on an individualized basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports and other school activities, ensuring the student's comfort, and minimizing stigmatization of the student.

- i. Unless the student requests otherwise, transgender and gender expansive students should have access to the locker room that corresponds to the student's gender identity asserted at school, like all other students.
- ii. Any student who has the need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should, if possible, be provided with a reasonable alternative changing area such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a physical education instructor's office in or near the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponds to gender identity before or after other students).
- iii. Any alternative arrangement should be provided to protect the student's ability to keep the student's transgender or gender expansive status confidential.
- iv. The District shall work with each gender expansive student to determine which restrooms and locker room facilities are most comfortable for the student.
- v. In no case shall a transgender student be required to use a locker room that conflicts with the student's gender identity.

7. PHYSICAL EDUCATION AND HEALTH EDUCATION CLASSES AND INTRAMURAL SPORTS

- a. All students shall be permitted to participate in physical education classes, health education classes, and intramural sports and activities in a manner consistent with their gender identity.

8. SCHOOL TRIPS

- a. All students shall be permitted to participate in all school trips in a manner that corresponds with their gender identity. In planning school trips, staff is expected to assess the student's needs in collaboration with the student and/or the student's parent(s)/guardian(s) and make reasonable efforts to provide an acceptable accommodation to the student. Accommodations will be discussed in advance of the trip on a case-by-case basis.

9. INTERSCHOLASTIC COMPETITIVE SPORTS TEAMS/ACTIVITIES

- a. All students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and in compliance with the applicable regulations of the Minnesota State High School League (MSHSL).

10. OTHER GENDER-BASED ACTIVITIES, RULES, POLICIES AND PRACTICES

- a. As a general matter, Minneapolis Public Schools will evaluate, on an ongoing basis, all gender-based activities, rules, policies, and practices, including but not limited to classroom activities, school ceremonies, yearbooks and school photos. Students will be permitted to participate in any such activities or conform to any such rule, guidelines, or practice consistent with their gender identity.

11. DISCRIMINATION/HARASSMENT/BULLYING

- a. It is the policy of the District to maintain a safe and supporting learning and educational environment that is free from harassment, intimidation, violence, and/or bullying and free from discrimination on account of gender, gender identity, and gender expression.
- b. Complaints alleging discrimination or harassment based on a student's actual or perceived transgender status or gender expansive status generally are to be handled in the same manner as sex discrimination, harassment or bullying complaints. For information about the types of conduct that constitute a violation of the school district's policy on harassment and violence and the school district's procedures for addressing such complaints, refer to the school district's policy on harassment and violence (MPS Policy 4002). For information about the types of conduct that constitute a violation of the school district's policy on bullying and the school district's procedures for addressing such complaints, refer to the school district's policy on bullying (MPS Policy 5201).

12. RESPONSIBILITY

- a. The Superintendent is authorized to promulgate regulations to implement this policy.
- b. The Superintendent or their designee shall provide regular training to district personnel on this policy.

Original Adoption:

6/11/2024

Legal References:

- Minn. Stat ch. 363A (Minnesota Human Rights Act)
- Minn. Stat. § 121A.031 (Safe and Supportive Minnesota Schools Act)
- Minn. Stat. § 121A.03, subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)
- Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)
- 20 U.S.C. § 1681 et seq. (Title IX)
- 20 U.S.C. § 1701 et seq. (Equal Educational Opportunities)

MPS Policy Cross References:

- Policy 4002 (Harassment And Violence Prohibition Protected Classes)

- Policy 5000 (Equal Education Opportunity)
- Policy 5201 (Bullying And Hazing Prohibition)
- Policy 5050 (Title IX Non-Discrimination)
- Policy 5051 (Equal Opportunity In Athletics)
- Policy 5690 (Student Data)

HISTORY

Adopted by Res. [2024-0022](#) on 6/11/2024

Exhibit E

I. PURPOSE

- A. These procedures set forth the School District's procedures for schools to address the needs and concerns of transgender and/or gender-expansive students to ensure safe, supportive, and healthy school environments where every child can learn. These procedures are intended to: 1) ensure that all students are welcomed, valued, included, and respected; 2) to help schools ensure safe learning environments free of discrimination, harassment, and bullying; and 3) to promote the educational and social integration of transgender and/or gender-expansive students. These procedures do not and cannot anticipate every situation that may occur, as every student is unique. The support for each student must be assessed and addressed individually based upon the student's specific requests and needs.

II. DEFINITIONS

- A. The definitions are not intended to label students, but rather to assist in understanding this procedure and the legal obligations of District staff. It is recognized that students might or might not use these terms to describe themselves.
 1. *"Cisgender"*: is a term that describes a person whose gender identity aligns with the sex assigned to them at birth.
 2. *"Gender Identity"* is a person's deeply held sense or psychological knowledge of their own gender, regardless of the sex or gender they were assigned at birth. A person's gender identity can be the same or different than the sex or gender assigned at birth.
 3. *"Gender Expression"* refers to the manner in which a person represents or expresses that person's gender identity to others, often through behavior, clothing, hairstyles, activities, or mannerisms.
 4. *"Transgender/Trans"* is an umbrella term for people whose gender identity and/or expression is different from the sex they were assigned at birth.
 5. *"Gender Non-Conforming"* describes those whose gender expression differs from social and cultural expectations, as well as those who identify outside the gender binary.
 6. *"Gender-expansive"* describes someone with a more flexible gender identity than is associated with the gender binary.
 7. *"Sex"* refers to a person's biology and is generally categorized as male, female, or intersex.

III. PRIVACY

- A. All students have a right to privacy, including the right to keep private one's transgender or gender expansive status at school. Transgender and gender-expansive students have the right to discuss and express their gender identity and expression openly and to decide when, how, and with whom to share private information, well as to determine what information will be shared.
- B. The privacy of student data is governed by the Minnesota Government Data Practices Act (MDGPA) and the Family Educational Rights and Privacy Act (FERPA). Virtually all student data are private, including a student's gender identity, sex assigned at birth, transgender identity, or information that may reveal a student's gender identity (e.g., birth name).
- C. Private student data are accessible only to:
 - 1. the student who is the subject of the data,
 - 2. their parent/guardian (see **Parent Access to Information**),
 - 3. District employees, contractors, and volunteers whose work assignment reasonably requires access and who have a legitimate educational interest
- D. To ensure the safety and well-being of the student, District employees shall not disclose information that reveals a student's gender identity, sex assigned at birth, transgender identity, or information that may reveal a student's gender identity (e.g., birth name) to staff members, students, or parents/guardians of other students unless:
 - 1. The student or student's parent/guardian has given written consent
 - 2. The information is needed by other school personnel within the District who have a legitimate educational interest in the information in order to perform their duties or provide services to the student
 - 3. A federal or state law compels disclosure (i.e. health emergency, court order or subpoena)
 - 4. ~~The person is a parent or legal guardian of the student (see **Parent Access to Information**)~~
- E. In some cases, transgender or gender-expansive students may feel more supported and safer if other students are aware that they are transgender or gender-expansive. In such cases, District staff should work closely with the student, parent/guardian, and other staff members on a plan to inform and educate the student's peers and shall document the plan. In some circumstances, it may also be appropriate to engage external resources to assist with educational efforts. The District must have written consent from the **student or** parent/guardian before disclosing a student's transgender or gender-expansive status to other students.

IV. PARENT ACCESS TO INFORMATION

- A. If a child is under the age of 18, the law generally gives parents/guardians the right to access all educational data on their child, unless there exists a court order which

specifically denies access to the data.

- B. If a parent or guardian requests information about their child who is under the age of 18, including information about whether their child identifies as transgender, **gender-expansive**, or whether their child has asked to use a name, pronouns, restrooms, or locker rooms based on the child's gender identity rather than their legal name or sex assigned at birth, a staff member must provide that information to the parent/guardian if the staff member is in possession of that information at the time the request is made.
- C. Staff members may refuse to provide such information if the student is 18 years of age or older, unless the parent has been designated as the child's legal guardian or conservator.
- D. Any staff member who provides such information to a parent/guardian should promptly inform the lead principal of the school or lead administrator of the program.

V. NAMES, PRONOUNS, GENDER MARKERS AND DISTRICT RECORDS

- A. A student ~~and/or~~ a parent/guardian has the right to request that the student be referred to by a **preferred** name and pronouns that **reflect** ~~correspond to~~ the student's gender **expression** ~~identity~~ by all school staff and fellow students, unless the student's principal determines that the use of a particular name or pronoun would be patently offensive.
- B. In order for a student to be addressed by the **preferred** name and pronouns that **reflect** ~~correspond to~~ the student's gender **expression** ~~identity~~ by members of the school community, parent/guardian consent is not required, a court-ordered name change or official gender change is not required, and the student is likewise not required to change the school's "official records" or the school's student information system (SIS).
- C. The District is required to maintain a mandatory and permanent student record ("official record") that includes a student's legal name and legal gender. The District will change a student's "official record" to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order or other official government action.
- D. The District is not required to use a student's legal name and gender on other school records or documents that do not constitute "official records", and should use a **preferred** name, gender and/or pronouns that **reflect** ~~correspond to~~ the student's gender **expression** ~~identity~~.
- E. Parent(s)/Guardian(s) have a right to request that the District change the student's first and middle name; **and/or** gender identity; ~~and/or preferred pronouns that correspond to the student's gender identity~~ in the school's SIS. Documenting the name **and/or** ~~pronouns that correspond to the student's gender identity~~ in the school's SIS will help ensure that a student's preferred name **and/or** gender identity ~~and/or preferred pronouns~~ are used correctly in the school setting. **See Form 413A Student Name and/or Gender Change Request Form Instructions.**
- F. In situations where the student's name has not been changed in the "official records", and

District staff or administrators are required by law to use or report a transgender or gender-expansive student's legal name or gender, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of confidential or private information relating to a student's gender identity or gender expression to parties lacking a legitimate educational interest in that information. When administering standardized tests or conducting surveys, the building administrator or designee should ensure that a student's preferred name is used.

- G. If a student and/or a parent/guardian requests that the student be referred to by a **preferred** name and pronouns that **reflect** ~~correspond to~~ the student's gender **expression** ~~identity~~, but has not made a request to change the school's "official records" or the student's information in the school's SIS, the building administrator and staff should work to accommodate the preferred change to the greatest extent possible.

VI. GENDER-SEGREGATED FACILITIES

- A. Transgender and gender-expansive students shall have access to gendered facilities that are consistent with the student's gender identity. This includes, but is not limited to, multi-stalled gendered restrooms and locker rooms.
- B. Restroom Accessibility - Pursuant to Minn. Stat. 363A.13, subd. 1 (N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020)), students shall have access to the restroom that corresponds to their gender identity asserted at school.
1. Any student who has a need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided access to a single user restroom.
 2. No student shall be required to use a single user restroom because they are transgender or gender-expansive.
 3. ~~The District shall work with each gender-expansive student to determine which restrooms are most comfortable for the student.~~
 4. In no case shall a transgender or gender-expansive student be required to use a restroom that conflicts with the student's gender identity.
 5. **This section does not give permission to non-transgender or non-gender-expansive students (i.e., cisgender students) to use a facility that does not correspond to their gender identity.**
 6. ~~Students seeking to use facilities that do not correspond to their sex assigned at birth must first notify their principal or designee of their intent to do so.~~
- C. Locker Room Accessibility - Pursuant to Minn. Stat. 363A.13, subd. 1 (N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020)), the use of

locker rooms by transgender and gender-expansive students shall be assessed on an individual basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports and other school activities, ensuring the student's safety and comfort, and minimizing stigmatization of the student.

1. Unless the student requests otherwise, transgender and gender-expansive students should have access to the locker room that corresponds to the student's gender identity asserted at school, like all other students.
2. Any student who has the need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided with a reasonable alternative changing area such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a physical education instructor's office in or near the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponds to gender identity before or after other students).
3. Any alternative arrangement should be provided in a manner that protects the student's ability to keep the student's transgender or gender-expansive status confidential.
4. ~~The District shall work with each gender-expansive student to determine which restrooms and locker room facilities are most comfortable for the student.~~
5. In no case shall a transgender or gender-expansive student be required to use a locker room that conflicts with the student's gender identity.
6. This section does not give permission to non-transgender or non-gender-expansive students (i.e., cisgender students) to use a facility that does not correspond to their gender identity.
7. ~~Students seeking to use facilities that do not correspond to their sex assigned at birth must first notify the school of their intent to do so.~~

D. Response to Requests, Concerns or Complaints - Student and/or parent/guardian requests, concerns or complaints regarding gender-segregated facilities should be forwarded to the building principal. These may include:

1. Requests from students and/or parents/guardians for increased privacy and a reasonable restroom or locker room alternative;
2. Concerns or complaints from students and/or parents/guardians that the District is violating a student's privacy rights by allowing transgender students to use restroom and locker room facilities consistent with their gender identity. Responses to concerns or complaints may include a reminder that school officials may not share private information about other students, the District follows the

laws governing the rights of transgender and gender-expansive students, and that alternative arrangements are available for any student who has an increased desire for restroom or locker room privacy.

VII. GENDER-SEGREGATED ACTIVITIES, CLASSES, RULES, POLICIES AND PRACTICES

- A. To the extent possible, schools should reduce or eliminate the practice of segregating students by gender.
- B. In situations where students are segregated by gender, students have the right to participate in any such activities or conform to any such rule, policy, or practice in a manner that aligns with their gender identity consistently asserted at school.
- C. The District will make reasonable accommodations to the curriculum and provide staff training to accommodate students whose gender identity aligns outside the binary male and female constraints.
- D. Transgender and gender-expansive students shall be permitted to participate in physical education classes and health education classes in a manner consistent with their gender identity or in a manner that allows the student to feel the safest, included, and most comfortable.
- E. Students in physical education classes may be grouped by ability, as long as a student's ability is based on objective standards of individual performance. A student's gender identity shall not be considered when assessing ability.

VIII. DRESS CODES

- A. Transgender and gender-expansive students have the right to dress in a manner consistent with their gender identity or gender expression, including at school-sponsored functions such as dances, after school activities, and graduation. Policy 504 and Procedure 504A Student Dress will be enforced consistently, regardless of a student's gender identity or expression.
- B. A student whose gender expression is different from expectations based on the student's sex assigned at birth will not be considered disruptive of the educational process or as an interference with the maintenance of a positive teaching/learning climate.

IX. SCHOOL TRIPS

- A. All students shall be permitted to participate in all school trips, including overnight trips, in a manner that corresponds with their gender identity or in a manner that allows the student to feel the safest, included, and most comfortable. In planning school trips, staff is expected to assess the student's need in collaboration with the student and/or the student's parent(s)/guardian(s) and make reasonable efforts to provide an accommodation that is acceptable to the student. Accommodations will be discussed in advance of the trip on a case-by-case basis and will be documented in writing. In all cases, the school has an

obligation to maintain the privacy of all students and cannot disclose or require the disclosure of the student's gender identity to the other students or the parent(s)/guardian(s) of other students.

X. INTRAMURAL SPORTS, EXTRA-CURRICULAR ACTIVITIES AND INTERSCHOLASTIC SPORTS TEAMS/ACTIVITIES

- A. Transgender and gender-expansive students shall be permitted to participate in school-sponsored sports and activities in a manner consistent with their gender identity or in a manner that allows the student to feel the safest, included, and most comfortable. Transgender students must have an equal opportunity to participate and are subject to the same performance criteria that apply to all other students.
- B. Transgender and gender-expansive students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and in compliance with the applicable regulations of the Minnesota State High School League (MSHSL).

XI. COMPLIANCE

- A. District employees who refuse to abide by these Guidelines may be subject to disciplinary actions, up to and including termination, as set forth in the relevant employee discipline policy. This includes a staff member's persistent refusal to respect a student's gender identity, for example by consistently referring to the student by a name or pronoun that does not correspond with the student's gender identity.

XII. DISCRIMINATION/HARASSMENT/BULLYING

- A. It is the policy of the District to maintain a safe and supporting learning and educational environment that is free from harassment, intimidation, violence, and/or bullying and free from discrimination on account of gender, gender identity, and gender expression.
- B. Complaints alleging discrimination or harassment based on a student's actual or perceived transgender status or gender non-conformity generally are to be handled in the same manner as sex discrimination, harassment or bullying complaints. For information about the types of conduct that constitute violation of the District's policy on harassment and violence and the District's procedures for addressing such complaints, refer to the District's policy on harassment and violence (Policy 413). For information about the types of conduct that constitute violation of the District's policy on bullying and the District's procedures for addressing such complaints, refer to the District's policy on bullying (Policy 514).

XIII. RESPONSIBILITY

- A. The Superintendent is authorized to promulgate guidance to implement this procedure.
- B. The Superintendent or their designee shall provide regular training to district personnel on this procedure.

CROSS REFERENCES

Policy 102 (Equal Education Opportunity)

Policy 105 (Equity Policy)

Policy 413 (Harassment and Violence)

Policy 504 (Dress Codes)

Procedure 504A (Dress Codes)

Policy 514 (Bullying Prohibition Policy)

Policy 515 (Protection and Privacy of Pupil Records)

Policy 522 (Title IX Sex Nondiscrimination Policy, and Grievance Procedure and Process)

LEGAL REFERENCES:

Minn. Stat Ch. 363A (Minnesota Human Rights Act)

Minn. Stat. § 13.32 (Educational Data)

Minn. Stat. § 121A.031 (Safe and Supportive Minnesota Schools Act)

Minn. Stat. § 121A.03, subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)

Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)

20 U.S.C. § 1232g (Family Educational and Privacy Rights)

20 U.S.C. § 1681 et seq. (Title IX)

20 U.S.C. § 1701 et seq. (Equal Educational Opportunities)

34 C.F.R. Part 106 (Implementing Regulations of Title IX)

CASE LAW

N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020)

Montgomery v. ISD No. 709, 109 F.Supp. 2d 1081, 1093 (D. Minn. 2000)

Bostock v. Clayton County, 140 S. Ct. 1731 U.S. 2020

Exhibit F

ADMINISTRATIVE PROCEDURE 522.1 - GENDER IDENTITY

I. PURPOSE

Our efforts in this district in addressing safety and bullying should be in compliance with the expectations embedded in the Minnesota Safe and Supportive Schools Act.

Students are protected from discrimination on the basis of sex pursuant to Title IX of the Education Amendments of 1972 and on the basis of sex and sexual orientation pursuant to the Minnesota Human Rights Act. Under Title IX, sex includes failure to conform to sex-based stereotypes.

Under the Minnesota Human Rights Act, sexual orientation includes gender identity and gender expression. The purpose of this administrative procedure is to assist administrators and district staff in providing a safe, secure and dignified educational and work atmosphere for all students and staff. Please review this guidance in preparation for future situations that may arise involving transgender and gender diverse students and staff and refer back to it when needed. If issues arise that are not addressed within this administrative procedure or more information and support is desired, please contact the superintendent or superintendent designee for assistance.

II. DEFINITIONS

A. Gender

Our body, identity and social gender (how we present our gender in the world and how individuals, society, culture, and community perceive, interact with, and try to shape our gender) are three distinct, but interrelated, components that comprise a person's experience of gender. Each of these dimensions can vary greatly across a range of possibilities. A person's comfort in their gender is related to the degree to which these three dimensions feel incongruence.

B. Gender Identity

Our deeply held, internal sense of self as masculine, feminine, a blend of both, neither, or something else. Identity also includes the name we use to convey our gender. Gender identity can correspond to, or differ from the sex we are assigned at birth.

C. Gender Expression

How an individual expresses or shows their gender to the world around them. This is our "public" gender. How we present our gender in the world and how society, culture, community, and family perceive, interact with, and try to shape our gender. Gender expression is also related to gender roles and how society uses those roles to try to enforce conformity to current gender norms.

D. Transgender

Sometimes this term is used broadly as an umbrella term to describe anyone whose gender identity differs from their assigned sex. It can also be used more narrowly as a gender identity that reflects a binary gender identity that is “opposite” or “across from” the sex they were assigned at birth.

E. Gender Non-Conforming

Denoting or relating to a person whose behavior or appearance does not conform to prevailing cultural and social expectations about what is appropriate to their sex.

III. SAFETY AND BULLYING

Address bullying and name-calling consistently and equitably. This includes name-calling and bullying based on gender stereotypes. Address claims of discrimination or harassment based on the person’s gender identity as one would all other types of claims.

IV. NAMES AND PRONOUNS

A. “Chosen name” is a name that a person chooses to use for oneself, that is different from a person’s legal name.

B. "preferred gender pronoun" is the pronoun a person chooses to use for oneself. Examples of pronouns:

1. She, her, hers
2. He, him, his
3. They, them, theirs
4. Xe (“zee”), xir (“zeer”), xirs (“zeers”)

This is not a comprehensive list and students and staff should be allowed to identify their preferred pronouns.

Procedure: Staff are expected to refer to all students and staff by their chosen name and preferred gender pronouns.

V. FACILITIES

The district will work to provide options-based universal access to facilities, based on need. This is considered a best practice for all students as it allows equitable access for all.

A. Bathrooms

Provide students and staff with access to restrooms that correspond to the gender identity the student or staff consistently asserts at school and make accessible a single-stall gender neutral restroom that is available to all students and staff and required of none.

B. Locker Rooms

Provide students with access to a locker room that corresponds to the gender identity the student consistently asserts at school. Alternate changing facilities are available to all students and required of none. Schools will work with students to make reasonable accommodations based on individual situations. For example, the person could be given access to a single stall gender non-specific or staff restroom, use of the Physical Education Office facility, or a private room for changing purposes.

VI. GENDERED ACTIVITIES

Avoid using gender as a characteristic for divisions whenever possible. When groups are separated by gender, allow students to self-select the group in which they would feel most comfortable.

VII. FORMS, STUDENT RECORDS, AND STUDENT DATABASE

The district is committed to updating forms and records to allow for students and families to report preferred name in addition to legal name and gender identity (male, female or non-binary) in addition to sex assigned at birth.

Students have the option to either update their preferred name and pronouns in the system (requires student signature) and/or to amend their identity in district technology systems (requires both student and parent/guardian signature for students under 18). Diplomas, transcripts and state testing materials will reflect the student's legal name. Students may request a duplicate diploma reflecting their preferred name.

[Name or Gender Identification Change Request](#)

VIII. PRIVACY

School staff will be mindful of and uphold the right to privacy of our transgender and gender non-conforming students. Information will be shared with school staff about a specific student on a need-to-know basis. The student's well-being will be at the center of all decisions.

IX. DISSEMINATION OF ADMINISTRATIVE PROCEDURE AND EVALUATION

- A. This administrative procedure shall be made available to all students, parents/guardians of students, staff members, employee unions and organizations.
- B. The school district shall review this administrative procedure and the school district's operation for compliance with state and federal laws prohibiting discrimination on a continuous basis.

Legal References: Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)
Minn. Stat. Ch. 363A (Minnesota Human Rights Act) 20 U.S.C. §§ 1681-1688
(Title IX of the Education Amendments of 1972) 34 C.F.R. Part 106
(Implementing Regulations of Title IX)
20 U.S.C. § 1232g; 34 CFR Part 99 (Federal Educational Rights and Privacy Act)

Cross Reference: [RAS Policy 102.1 Equity Policy](#)

522.1 - GENDER IDENTITY

I. PURPOSE

Our efforts in this district in addressing safety and bullying should be in compliance with the expectations embedded in the Minnesota Safe and Supportive Schools Act.

Students are protected from discrimination on the basis of sex pursuant to Title IX of the Education Amendments of 1972 and on the basis of sex and sexual orientation pursuant to the Minnesota Human Rights Act. Under Title IX, sex includes failure to conform to sex-based stereotypes.

Under the Minnesota Human Rights Act, sexual orientation includes gender identity and gender expression. The purpose of this administrative procedure is to assist administrators and district staff in providing a safe, secure and dignified educational and work atmosphere for all students and staff. Please review this guidance in preparation for future situations that may arise involving transgender and gender diverse students and staff and refer back to it when needed. If issues arise that are not addressed within this administrative procedure or more information and support is desired, please contact the superintendent or superintendent designee for assistance.

II. GENERAL STATEMENT OF POLICY

- A. The school district provides equal educational opportunity for all students and does not unlawfully discriminate on the basis of sex or sexual orientation. No student will be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any educational program or activity operated by the school district on the basis of sex or sexual orientation.
- B. It is the responsibility of every school district employee to comply with the administrative procedure.
- C. The school board has designated the Executive Director of Human Resources as its Title IX coordinator. This employee coordinates the school district's efforts to comply with and carry out its responsibilities under Title IX.

III. PROCESS

The superintendent is directed to develop administrative procedures for Gender Identity for the School District that meet the state and federal requirements established in law or rule.

Legal References: Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)
Minn. Stat. Ch. 363A (Minnesota Human Rights Act) 20 U.S.C. §§ 1681-1688
(Title IX of the Education Amendments of 1972) 34 C.F.R. Part 106 (Implementing Regulations of Title IX)
20 U.S.C. § 1232g; 34 CFR Part 99 (Federal Educational Rights and Privacy Act)

Cross References: [RAS Equity Policy 102.1](#)

Exhibit G

535-Gender Inclusion

500 SERIES: STUDENTS

Rationale	Date Approved/Revised
The purpose of this policy is to foster an educational environment that is safe and free from discrimination for all students, regardless of gender identity or gender expression, and to facilitate compliance with local, state, and federal laws prohibiting discrimination. This policy is also designed to support the school district’s mission to commit each day to develop and empower lifelong learners who thrive in diverse communities.	9/24/19

1. General Statement of Policy

The school district will act to improve the educational integration of transgender and gender nonconforming students and strive to maintain the privacy of these students. Furthermore, the school district will support healthy communication between educators, students, and parents or guardians to further the successful educational development and well-being of every student.

2) Definitions

The following definitions are provided to assist in understanding this policy. Students may or may not use these terms to describe themselves.

- A. “Assigned sex at birth” refers to a person’s biology when they are born, and is generally categorized as male or female.
- English (English)

[Skip To Main Content](#)

- B. "Gender identity" means a person's deeply held sense or psychological knowledge of their own gender. One's gender identity can be the same as or different from their assigned sex at birth. Most people have a gender identity that matches their assigned sex at birth. For some, however, their gender identity is different from their assigned sex. All people have a gender identity, not just transgender people.
- C. "Gender expression" means the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.
- D. "Transgender" means a gender identity or expression different from that traditionally associated with an assigned sex at birth.
- E. "Transition" means the process in which a person goes from living and identifying as one gender to living and identifying as another.
- F. "Gender nonconforming" means gender expression different from stereotypical expectations. This term includes people who identify outside traditional gender categories.

3) Scope

This policy covers conduct that takes place in the school, on school property, at school-sponsored functions and activities, on school buses or vehicles and at bus stops. This policy also pertains to the use of electronic technology and electronic communication that occurs in the school, on school property, at school-sponsored functions and activities, on school buses or vehicles and at bus stops, and on school computers, networks, forums, and mailing lists. This policy applies to the entire school community, including educators, school district staff and students.

4) Bullying, Harassment, and Discrimination Prohibition

Discrimination, bullying, and harassment on the basis of gender identity or expression are prohibited within the school district. Each school and all staff are responsible for ensuring that all students, including transgender and gender nonconforming students, have a safe school environment. The scope of this responsibility includes ensuring that any incident of discrimination, bullying, or harassment based on a person's actual or perceived gender identity or expression is handled in the same manner as other discrimination, bullying, or harassment complaints.

5) Privacy/Confidentiality

English (English)

[Skip To Main Content](#)

All students have a right to privacy, and this includes the right to keep one's transgender status private at school. Information about a student's transgender status, legal name, or gender assigned at birth also may constitute confidential medical information. Disclosing this information to other students, parents or guardians, or third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (FERPA) and the Minnesota Government Data Practices Act (MGDPA). The school district will keep confidential all medical information relating to transgender and gender nonconforming students in accordance with applicable local, state, and federal privacy laws. School staff shall not disclose information that may reveal a student's transgender status to others, including other parents and school staff, unless the other staff member has a need to know, is legally required to be notified, or when written permission has been given.

Transgender and gender nonconforming students have the right to discuss and express their gender identity and expression openly and to decide when and with whom to share private information, as well as how much private information to share. 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. (See "Student Transitions and Support Plans" below.)

6) Official Records

The school shall maintain a mandatory permanent student record that includes a student's legal name and legal gender. The school will change a student's official record to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order, or through amendment of state or federally issued identification. However, to the extent that the school is not legally required to use a student's legal name and gender on other school records or documents, the school shall use the name and gender preferred by the student. In situations where school staff or administrators are required by law to use or to report a transgender student's legal name or gender, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of confidential information.

7) Names and Pronouns

Every student may request 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 their official records. A recommended best practice for teachers is to privately ask students who disclose that they identify as transgender or

English (English)

[Skip To Main Content](#)

gender nonconforming how they want to be addressed in class. District communication to parents will use the student's legal name, pronouns, and gender as established by their official records, unless otherwise specified by a support plan.

8) Gender-Based Activities, Areas, Rules, Procedures and Practices

To the extent practicable, students shall be permitted to participate in activities or conform to rules, procedures, or practices consistent with their gender identity and the rules, policies, and procedures established by the Minnesota State High School League.

A. Schools may maintain separate restroom, locker room, and changing facilities for male and female students. It is the general position of the school district that students may use the restroom, locker room, or changing facility that corresponds with their gender identity, rather than their assigned sex; however, students seeking to use facilities that do not correspond to their assigned sex must first notify the school that they will be doing so. With respect to all restrooms, locker rooms, or changing facilities, transgender or gender nonconforming students will have access to facilities that correspond to their gender identity, the required notification shall consist of either meeting with and approval by a licensed school counselor who is sufficiently

 knowledgeable on gender dysphoria to properly determine whether a student's request to use such facilities accurately reflects that student's gender identity, or a written statement from an appropriate health-care professional, acting within the scope of their licensure, that verifies the existence of the student's consistent and uniform or sincerely held gender identity.

B. For any gender-segregated facility, any student, of any gender identity, who is uncomfortable using a shared facility, regardless of the reason, may request to be provided with a reasonable alternative.

9) Student Transitions and Support Plans

1. In order to maintain privacy and confidentiality regarding their 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, in consultation with the minor student's parents or guardians, may create a student support plan to ensure student health, well-being, and safety.

10) Training and Professional Development

English (English)

[Skip To Main Content](#)

Information regarding gender identity shall be included in any school district training or professional training related to the prevention of bullying, harassment, or discrimination.

11) Publication_

This policy will be included in the student handbook and posted on the school district website.

Adoption and Revision History	Incorporated Policies
 Policy 535 GENDER INCLUSION This Policy Adopted: September 24, 2019	

Administrative Rule, Regulation and Procedure: NA

Legal References: Minn. Stat. § 13.32 (Educational Data)

Minn. Stat. § 121A.031 (School Student Bullying Policy)

Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)

Minn. Stat. Ch. 363A (Minnesota Human Rights Act)

20 U.S.C. § 1232g (Family Educational and Privacy Rights)

20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)

34 C.F.R. Part 106 (Implementing Regulations of Title IX)

Cross References: [School District Policy 104 \(Mission, Values & Beliefs\)](#)

English (English)

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School District Policy 102 (Equal Educational Opportunity)

School District Policy 413 (Harassment and Violence)

School District Policy 514 (Bullying Prohibition Policy)

School District Policy 515 (Protection and Privacy of Pupil Records)

School District Policy 522 (Student Sex Nondiscrimination)

School District Policy 526 (Hazing Prohibition)



535GenderInclusion

(<https://resources.finalsite.net/images/v1682364308/isd622org/kn36kp5qozizvldo0vsu/535Gen>)



English (English)

Exhibit H

Board Adopted: May 28, 2024 [NEW]
Board Information: April 22, 2024
Contact Person: Assistant Superintendent

POLICY 540 STUDENT-GENDER INCLUSION

I. PURPOSE

To facilitate compliance with applicable laws and organizational guidelines as well as to foster an educational environment that is safe, supportive and inclusive for all students.

II. GENERAL STATEMENT OF POLICY

The Bloomington Public School Board recognizes schools must be safe, supportive and inclusive for all students. Bullying, harassment and discrimination on the basis of gender identity or expression are prohibited, as referenced in Policy 413: Harassment and Violence and Policy 514: Bullying Prohibition..

III. DEFINITIONS

- A. Gender - The socially constructed roles, activities, behaviors and attributes that a given society attaches to femininity and masculinity.
- B. Assigned Gender - An individual's gender assigned at birth, which correlates to the biological, genetic, and anatomical makeup of a body.
- C. Gender Expression - The manner in which an individual realizes and manifests their gender.
- D. Gender Identity - An individual's sense of being male, female, or otherwise on a continuum of gender.
- E. Gender Nonconformity - Behaviors and interests that fit outside of stereotypical behaviors and interests for an individual's assigned sex.
- F. Transgender - An individual whose gender is different from the gender assigned to them at birth.

IV. NAMES & PRONOUN USAGE

All students have the right to be referred to by their identified name and/or pronoun. Members of the school community should address students by the name and pronoun corresponding to the gender identity that is consistently asserted at school. To the extent possible, and consistent with these guidelines, all members of the school community will make efforts to maintain the confidentiality of the student's gender identity. The intentional or persistent refusal to respect a student's gender identity (for example, intentionally referring to the student by a

name or pronoun that does not correspond to the student's gender identity) can constitute harassment and is a violation of this policy.

A court-ordered name or gender change is not required, and a student need not change official records in order to have this request honored by all members of the school community. Official records must identify a student with their legal name and assigned gender, unless the student has legally changed their name.

V. PRIVACY

- A. All students have a right to privacy. A student's gender status is private information. Related information, such as a student's legal name, may also constitute private information. Information regarding a student's gender status may also be confidential medical information. Intentionally disclosing this information to other students, other students' parents or third parties may violate privacy provisions in certain laws, such as the federal Family Educational Rights and Privacy Act (FERPA) and the Minnesota Government Data Practices Act. Disclosure of this information to school employees is also limited to those employees who have a legitimate educational reason for obtaining the information. Other disclosure may occur as allowed by exceptions to FERPA or the Minnesota Government Data Practices Act.
- B. District personnel shall not disclose information that reveals a student's gender status to others unless:
 - 1. By written consent of the parent/legal guardian or student
 - 2. The information is needed by other school personnel within the District who have a legitimate educational interest in the information in order to perform their duties or provide services to the student
 - 3. The person is a parent or legal guardian of the student; or a federal or state law compels disclosure (i.e. health emergency, court order or subpoena). Parents/guardians have full access to information regarding their children, except in very limited circumstances where a determination has been made by the superintendent or designee that access is not in the best interest of the child (i.e. to protect from maltreatment). Parents/guardians may not be denied access to any existing educational record unless the student is enrolled full time in a postsecondary institution or has attained the age of 18.
- C. Bloomington Public Schools shall keep private all personal information relating to a student's gender in accordance with board policy and applicable laws.
- D. Students have the right to discuss and express their gender identity and gender expression openly and decide when, with whom, and how much private information to share about themselves. The fact that a student chooses to disclose their gender status to a staff or other students does not authorize school staff to disclose other private information about the student.

VI. DRESS CODES

Students shall have the right to dress in accordance with their gender identity. The District's rules regarding clothing will be enforced consistently, regardless of a student's gender identity or expression.

VII. GENDER-SEGREGATED ACTIVITIES, RULES, POLICIES AND PRACTICES

Bloomington Public Schools shall consider all gender-based activities, curricula, rules, policies and practices, including but not limited to classroom activities, school ceremonies and school photos for inclusivity and cultural proficiency.

Students have the right to participate fully in overnight trips and other activities in accordance with Minnesota State High School League guidelines.

VIII. PHYSICAL EDUCATION CLASSES

All students have the right to participate in physical education classes in a manner that aligns with their gender identity.

IX. ACCESS TO RESTROOMS, LOCKER ROOMS, AND CHANGING AREAS

Each student shall have access to restrooms, locker rooms and changing areas that align with the student's gender identity asserted consistently at school. Any student who has a need or desire for increased privacy, regardless of the underlying reason, shall be provided access to a reasonable alternative, but no student shall be required to use such a facility.

Exhibit I

541 GENDER INCLUSION

STATEMENT OF SUPPORT

The students and staff of Duluth Public Schools deserve respectful and inclusive learning environments that value students' gender identity and gender expression. Duluth Public Schools ensures that all students have access to programming and facilities in which they feel comfortable, supported, and safe. This policy addresses the inequities some students, including intersex, transgender, two-spirit, gender nonconforming students and gender-questioning students, confront as they navigate a system designed using a gender binary model. These Guidelines do not and cannot anticipate every situation that may occur, as every student is unique. The support for each student must be assessed and addressed individually based upon the student's specific requests and needs.

These Guidelines are supported by District Policy:

102 Equal Education Opportunity,
413 Prohibiting Harassment and Violence,
514 Bullying Prohibition,
522 Title IX Student Sex Nondiscrimination,
526 Hazing Prohibition

I. DEFINITIONS

The definitions contained in these Guidelines are not intended to label students, but rather to assist in understanding these Guidelines and the legal obligations of district staff. It is recognized that students might or might not use these terms to describe themselves.

"Gender" refers to the socially constructed roles, behaviors, activities, and attributes that a given society attaches to femininity or masculinity.

"Gender Identity" is a person's deeply held sense or psychological knowledge of their own gender. A person's gender identity can be the same or different than the sex or gender assigned at birth.

"Sex Assigned at Birth" refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.

"Gender Expression" refers to the manner in which a person represents or expresses that person's gender identity to others, often through behavior, clothing, hairstyles, activities, or mannerisms. Although transgender people typically seek to make their gender expression match their gender identity, rather than their sex assigned at birth, gender expression may or may not conform to a person's gender identity.

"Gender non-conforming" is an umbrella term that is used to describe individuals whose gender expression, gender identity, or gender role differs from gender norms associated with their sex assigned at birth. This term also includes people who identify outside of traditional gender categories or identify as both or several genders. Other terms that can have a similar meaning include "gender diverse," "gender expansive," "genderqueer," and "nonbinary."

"Transgender/Trans" describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth. Transgender identity is not dependent on medical procedures or other physical changes.

"Transition" refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth.

II. PRIVACY

All students have a right to privacy, including the right to keep private one's transgender or gender-non-conforming status at school. Transgender and gender-non-conforming students have the right to discuss and express their gender identity and expression openly and to decide when, how, and with whom to share private information, well as to determine what information will be shared.

Information about a student's transgender or gender-non-conforming status is classified as private data under state and federal law. School district personnel may only disclose a student's gender identity to other school district employees if they have a "need to know" the information in order to perform their job duties. The fact that a student chooses to disclose his or her transgender status to staff or other students does not authorize school staff to disclose such information about the student.

A school district employee may not confirm or otherwise disclose a student's transgender status to the parents of other students in the school or community members.

III. OFFICIAL SCHOOL RECORDS

The school district is required to maintain a mandatory and permanent student record ("official record") that includes a student's legal name and gender. The school district will change a student's official record to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order or other official government action.

Pertaining to student of all grades: At the request of a transgender or gender-non-conforming student, and/or their parent/guardian the District will use the student's preferred name, gender identity, and preferred pronouns when referring to the student in education records.

IV. STUDENT NAMES, PRONOUNS, AND GENDER MARKERS

At the student's and/or parent's/guardian's request, a transgender and/or gender-non-conforming student in all grades has the right to be referred to at school by a name and pronouns that align with their gender identity. At the parent's/guardian's request, a transgender student in all grades has the right to be referred to at school by a name and pronouns that align with the student's gender identity. A court-ordered name change or official gender change is not required, and the parent/guardian or student is likewise not required to change the school's official records in order for the student to be addressed by the name and pronouns that correspond to the student's gender identity.

V. GENDER-SEGREGATED FACILITIES

All students shall have access to gendered facilities and school-sponsored programs that are consistent with the student's gender identity. This includes, but is not limited to, multi-stalled gendered restrooms, locker rooms, and school programs, trips, and athletic programs.

A. Restroom Accessibility

Pursuant to Minn. Stat. 363A.13, subd. 1 (*N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020)) students shall have access to the restroom that corresponds to their gender identity asserted at school:

1. Any student who has a need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided access to a single-user restroom.
2. No student shall be required to use a single-user restroom because they are transgender or gender-non-conforming.
3. The District shall work with each transgender and gender-non-conforming student to determine which restrooms are most comfortable for the student.
4. In no case shall any student be required to use a restroom that conflicts with the student's gender identity.

B. Locker Room Accessibility

Pursuant to Minn. Stat. 363A.13, subd. 1 (*N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020)), the use of locker rooms by transgender and gender-non-conforming students shall be assessed on an individualized basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports and other school activities, ensuring the student's comfort, and minimizing stigmatization of the student.

1. Unless the student requests otherwise, transgender and gender-non-conforming students should have access to the locker room that corresponds to the student's gender identity asserted at school, like all other students.
2. Any student who has the need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should, if possible, be provided with a reasonable alternative changing area such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a physical education instructor's office in or near the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponds to gender identity before or after other students).
3. Any alternative arrangement should be provided to protect the student's ability to keep the student's transgender or gender-non-conforming status confidential.
4. The District shall work with each gender-non-conforming student to determine which restrooms and locker room facilities are most comfortable for the student.
5. In no case shall a transgender student be required to use a locker room that conflicts with the student's gender identity.

VI. PHYSICAL EDUCATION AND HEALTH EDUCATION CLASSES AND INTRAMURAL SPORTS

All students shall be permitted to participate in physical education classes, health education classes, and intramural sports and activities in a manner consistent with their gender identity.

VII. SCHOOL TRIPS

All students shall be permitted to participate in all school trips in a manner that corresponds with their gender identity. In planning school trips, staff is expected to assess the student's needs in collaboration with the student and/or the student's parent(s)/guardian(s) and make reasonable efforts to

provide an acceptable accommodation to the student. Accommodations will be discussed in advance of the trip on a case-by-case basis.

VIII. DRESS CODES

All students have the right to dress in a manner consistent with their gender identity or gender expression, at school and at school-sponsored functions. This includes, but is not limited to dances, after-school activities, and graduation.

IX. INTERSCHOLASTIC COMPETITIVE SPORTS TEAMS/ACTIVITIES

All students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and in compliance with the applicable regulations of the Minnesota State High School League (MSHSL).

X. OTHER GENDER-BASED ACTIVITIES, RULES, POLICIES AND PRACTICES

As a general matter, Duluth Public Schools will evaluate, on an ongoing basis, all gender-based activities, rules, policies, and practices, including but not limited to classroom activities, school ceremonies, yearbooks and school photos. Students will be permitted to participate in any such activities or conform to any such rule, guidelines, or practice consistent with their gender identity.

XI. DISCRIMINATION/HARASSMENT/BULLYING

It is the policy of the District to maintain a safe and supporting learning and educational environment that is free from harassment, intimidation, violence, and/or bullying and free from discrimination on account of gender, gender identity, and gender expression.

Complaints alleging discrimination or harassment based on a student's actual or perceived transgender status or gender non-conformity generally are to be handled in the same manner as sex discrimination, harassment or bullying complaints. For information about the types of conduct that constitute a violation of the school district's policy on harassment and violence and the school district's procedures for addressing such complaints, refer to the school district's policy on harassment and violence (Policy 413). For information about the types of conduct that constitute a violation of the school district's policy on bullying and the school district's procedures for addressing such complaints, refer to the school district's policy on bullying (Policy 514).

Legal References: Minn. Stat ch. 363A (Minnesota Human Rights Act)
Minn. Stat. § 121A.031 (Safe and Supportive Minnesota Schools Act)

Minn. Stat. § 121A.03, subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)
Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)
20 U.S.C. § 1681 et seq. (Title IX)
20 U.S.C. § 1701 et seq. (Equal Educational Opportunities)

Cross References:

102 Equal Education Opportunity
413 Prohibiting Harassment and Violence
514 Bullying Prohibition
522 Title IX Student Sex Nondiscrimination
526 Hazing Prohibition
MSHSL Handbook
MSHSL ByLaws Duluth Public School District ISD #709

First Reading: 2.28.23
Second Reading: 3.21.23
Adopted: 3.21.23

Exhibit J

413 - Addendum C - Administrative Guidelines for Transgender and Gender- Expansive Student Rights and Protections

These Administrative Guidelines (“Guidelines”) set forth White Bear Lake Area Schools’ (“District”) procedures for schools to address the needs and concerns of transgender and gender-expansive students to ensure safe, supportive, and healthy school environments where every child can learn. These Guidelines are intended to: 1) ensure that all students are welcomed, valued, included, and respected; 2) help schools ensure safe learning environments free of discrimination, harassment, and bullying; and 3) promote the educational and social integration of transgender and gender-expansive students. These Guidelines do not and cannot anticipate every situation that may occur, as every student is unique. The support for each student must be assessed and addressed individually based upon the student’s specific requests and needs.

These Guidelines are supported by district Policy 102 (Equal Education Opportunity), 413 (Harassment and Violence), 515 (Bullying Prohibition Policy), 515 (Protection and Privacy of Pupil Records, 522 (Title IX Sex Nondiscrimination Policy, Grievance Procedure and Process), and 525 (Violence Prevention).

I. DEFINITIONS

A. **Cisgender** is a term used to describe individuals whose gender identity matches their sex assigned at birth.

B. **Gender-expansive** describes someone with a more flexible gender identity than might be associated with a gender binary.

C. Gender expression means the manifestation, presentation, or communication of one's gender identity through behavior, physical appearance, clothing, accessories, voice, body characteristics, or other means. Although transgender people may seek to make their gender expression match their gender identity, rather than their sex assigned at birth, gender expression may or may not conform to a person's gender identity.

D. Gender identity is a person's deeply held sense or psychological knowledge of their own gender, regardless of the sex or gender they were assigned at birth. A person's gender identity can be the same or different than the sex or gender assigned at birth.

E. Gender non-conforming is an umbrella term that is used to describe individuals whose gender expression, gender identity, or gender role differs from gender norms associated with their sex assigned at birth.

F. Parent means a person with legal custody or the legal guardian of a child.

G. Questioning is an identity label for people exploring their sexual orientation or gender identity.

H. Sex refers to a set of biological attributes. It is primarily associated with physical and physiological features including chromosomes, gene expression, hormone levels and function, and reproductive/sexual anatomy. Sex is usually categorized as female, male, or intersex, but there is variation in the biological attributes that comprise sex and how those attributes are expressed.

I. Sex assigned at birth refers to the sex designation recorded on an infant's birth certificate when such a record is provided at birth.

J. Sexual orientation refers to a person's pattern of sexual attraction, often toward a specific gender, toward multiple genders, or to nobody at all.

K. Transgender describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.

L. Transition refers to the process in which transgender people begin asserting the gender that corresponds to their gender identity instead of the sex assigned at birth.

II. NONDISCRIMINATION

A. Bullying and Harassment. Transgender and gender-expansive students have the right to attend school and participate in all school sponsored events and activities in an environment that is free from unlawful discrimination, including bullying or harassment that is based on gender identity, gender expression, sexual orientation, or any protected class status.

B. Response to Sexual Harassment. Harassment that is based on gender identity or transgender status is harassment based on sex. If sexual harassment occurs, the district must take prompt action to stop the harassment from occurring and to prevent it from recurring. Various laws and policies may be implicated, including Title IX, the Minnesota Human Rights Act, district Policy 413 (Harassment and Violence) and district Policy 514 (Bullying Prohibition Policy).

III. FACILITY USE

A. Restroom Accessibility. Pursuant to state law, students shall have access to the restroom that corresponds to their gender identity asserted at school:

1. Any student who has a need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided access to a single user restroom.
2. No student shall be required to use a single user restroom because they are transgender or gender-expansive.
3. The district shall work with each gender-expansive student to determine which restrooms are most comfortable for the student.

4. In no case shall a transgender or gender-expansive student be required to use a restroom that conflicts with the student's gender identity.

B. Locker Room Accessibility. The use of locker rooms by transgender and gender-expansive students shall be assessed on an individualized basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports and other school activities, ensuring the student's safety and comfort, and minimizing stigmatization of the student.

1. Unless the student requests otherwise, transgender and gender-expansive students should have access to the locker room that corresponds to the student's gender identity asserted at school, like all other students.

2. Any student who has the need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided with a reasonable alternative changing area such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a physical education instructor's office in or near the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponds to gender identity before or after other students).

3. Any alternative arrangement should be provided in a manner that protects the student's ability to keep the student's transgender or gender-expansive status confidential.

4. The district shall work with each gender-expansive student to determine which restrooms and locker room facilities are most comfortable for the student.

5. In no case shall a transgender or gender-expansive student be required to use a locker room that conflicts with the student's gender identity.

C. School Trips. All students shall be permitted to participate in all school trips in a manner that corresponds with their gender identity or in a manner that allows the student to feel the safest, included, and most

comfortable. In planning school trips, staff is expected to assess the student's need in collaboration with the student and/or the student's parent(s)/guardian(s) and make reasonable efforts to provide an accommodation that is acceptable to the student. Accommodations will be discussed in advance of the trip on a case-by-case basis.

IV. GENDER EXPRESSION

A. Student Names, Pronouns, and Gender Markers. A student has the right to request that the student be referred to by a name and pronouns that correspond to the student's gender identity by all school staff and fellow students. Parent(s)/ Guardian(s) have a right to request that the district change the student's name and/or gender marker in the school's student information system. A court-ordered name change or official gender change is not required, and the student is likewise not required to change the school's official records in order to be addressed by the name and pronouns that correspond to the student's gender identity.

B. Student Attire. Regardless of age, transgender and gender-expansive students have the right to dress in a manner that is consistent with their gender identity at school and at school sponsored events and activities.

V. EDUCATION RECORDS

A. MARSS Report. School districts must currently use a student's legal name and sex assigned at birth in the Minnesota Automated Reporting Student System (MARSS).

B. Other Records. At the request of a transgender or gender-expansive student, or their parent, the district will use the student's preferred name, gender identity, and pronouns when referring to the student in education records. This applies to all school records, including, but not limited to, the following:

- Transcripts
- Diplomas
- IEPs
- Section 504 Plans
- Honor or Award Certificates
- Yearbooks

- School IDs
- Announcements
- Programs for sports, plays, and concerts.

C. Amendment of Education Records. The Office for Civil Rights (OCR) has issued the following guidance for responding to requests to amend or correct education records to reflect a student's gender identity and new name in order to protect the student's privacy rights:

A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.

Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights. If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.

Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records. If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.

VI. STUDENT ACTIVITIES, PHYSICAL EDUCATION AND HEALTH EDUCATION, CLASSROOM AND PROGRAM EXPECTATIONS

A. Minnesota State High School League Activities. The MSHSL has adopted a bylaw that states: “In accordance with applicable state and federal laws, rules and regulations, the Minnesota State High School League allows participation for all students consistent with their gender identity or expression in an environment free from discrimination with an equal opportunity for participation in athletics and fine arts.” Based on this bylaw, transgender students must have an equal opportunity to participate but are subject to the same performance criteria that apply to all students trying out for a team. The MSHSL bylaws outline an appeals process for addressing eligibility disputes in this area. The current bylaws state:

Transgender Eligibility Appeal Procedures. The application to appeal a transgender eligibility determination is limited to the following circumstances:

(1) The school must have made a determination of ineligibility based on the student’s gender identity after receiving information that the student has a consistent gender identity or that the gender identity is sincerely held as part of the student’s core identity and the gender identity is different from the student’s sex assigned at birth and that the student wishes to participate in athletics in a manner consistent with the student’s gender identity.

(2) The appeal must be submitted to the MSHSL Executive Director or Executive Director’s Designee and may include, but is not limited to, the following:

(a) The student’s current transcript, school registration and any additional relevant information.

(b) The written statement from the student and the student’s parent(s)/legal guardian(s) affirming the consistent gender related identity and expression to which

the student self-relates.

(c) Statements from individuals such as, but not limited to parents, friends, and/or teachers, which affirm that the actions, attitudes, dress and manner demonstrate the student's consistent or sincerely held gender-related identification and expression.

(d) A written statement from an appropriate health-care professional, acting within the scope of his/her licensure that verifies the existence of the student's consistent and uniform gender-related identity or sincerely held gender-related identity.

(e) Any other evidence that the gender identity is sincerely held as part of the person's core identity as may be required by the school or the MSHSL office relative to the eligibility determination.

B. Physical Education and Health Education Classes and Intramural Sports. Transgender and gender-expansive students shall be permitted to participate in physical education classes, health education classes, and intramural sports and activities in a manner consistent with their gender identity or in a manner that allows the student to feel the safest, included, and most comfortable.

C. Classroom and Program Expectations. Teachers and staff in all subject areas will make their best efforts not to divide students based on sex assigned at birth or gender identity during any activities or classes. A student's gender identity shall not be considered when assessing ability.

D. Other School Sponsored Activities. Transgender and gender-expansive students have the right to participate in school sponsored activities consistent with their gender identity. Transgender and gender-expansive students must have an equal opportunity to participate and are subject to the same performance criteria that apply to all other students. To the extent possible, schools should reduce or eliminate the practice of segregating students by gender.

VII. PARENT ACCESS TO INFORMATION

A. Parent Involvement. If a student asks a school official to modify education records to refer to the student based on the student's gender identity rather than the sex assigned at birth, the school official will inform the student that the request requires that the parent be notified. If the student wants to pursue the modification, the school official or other appropriate staff member will inform the student's parents of the change unless they are over the age of 18.

B. May Not Withhold Information from a Student's Parent. A staff member must not refuse to provide parents with information about their child who is under the age of 18, including information about whether their child has asked to use a name, pronouns, restrooms, or locker rooms based on the child's gender identity rather than sex assigned at birth. Staff members may refuse to provide such information if the student is 18 years of age or older, unless the parent has been designated as the child's legal guardian or conservator. The law generally gives parents the right to access all educational data on their child, if the child is under the age of 18.

VIII. DATA PRIVACY

A. Disclosure of Transgender or Gender-Expansive Status to other Employees. All students have a right to privacy, including the right to keep private one's transgender or gender-expansive status at school. Transgender and gender-expansive students have the right to discuss and express their gender identity and expression openly and to decide when, how, and with whom to share private information, as well as to determine what information will be shared.

To ensure the safety and well-being of the student, district employees shall not disclose a student's gender identity, sex assigned at birth, transgender identity, or information that may reveal a student's gender identity (e.g., birth name) to anyone, including, but not limited to, other staff members, students, or parents of other students, unless such disclosure has been authorized by the student or their parent(s)/guardian(s). If such a disclosure is necessary, it will be documented in writing and should be discussed with the student in advance.

B. No Disclosure of Transgender or Gender-Expansive Status to Other Parents or Students. A school district employee may not confirm or otherwise disclose a student's transgender or gender-expansive status to the other students, parents of other students in the school, or community members. A student's gender identity is classified as private educational data.

C. Response to Parent Inquiries. If the parent of another student expresses a concern or makes a complaint that the district is violating their child's privacy rights by allowing transgender students to use restroom and locker room facilities consistent with their gender identity, the complaint should be forwarded to the building principal. When responding, the building principal should state that school officials may not share information about other students and that the school district follows the laws governing the rights of transgender students. If applicable, the principal may also consider informing the parent that single-use facilities are available for all students who have an increased desire for privacy.

IX. PROCEDURES

A. Proof Not Required. Students do not need to provide any documentation or other "proof" that they are transgender or gender-expansive as a prerequisite to being afforded the rights of a transgender and gender-expansive student.

B. Notice to Building Administrator. If a parent or student informs a staff member that a student wishes to change their facility use, gender identity, or update a status in the education records, the staff member must notify the building principal so the principal can ensure that the student's rights are honored and that appropriate supports are in place. Staff members should not unilaterally make decisions about supports that will or will not be provided to the student. If a student asks a school official to modify education records to refer to the student based on the student's gender identity rather than the sex assigned at birth, the school official will inform the student that the request requires parental consent. If the student wants to pursue the issue, the school official or other appropriate staff member will inform the student's parents of the change unless they are over the age of 18.

C. Staff Training and Compliance. All administrative staff shall be informed of the existence of these Guidelines. The district will provide training on these Guidelines and how to support transgender or gender-expansive students at reasonable intervals, to be determined by the district.

District employees who refuse to abide by these Guidelines may be subject to disciplinary actions, up to and including termination, as set forth in the relevant employee discipline policy. This includes a staff member's persistent refusal to respect a student's gender identity; for example, by consistently referring to the student by a name or pronoun that does not correspond with the student's gender identity.

Exhibit K

413R - Transgender And Gender Expansive Students

400 - EMPLOYEES/PERSONNEL

BURNSVILLE-EAGAN-SAVAGE SCHOOL DISTRICT 191 ADMINISTRATIVE REGULATION FOR SUPPORTING TRANSGENDER AND GENDER-EXPANSIVE STUDENTS

This Administrative Regulation (“Regulation”) sets forth Burnsville-Eagan-Savage School District 191 (“District”) procedures for schools to address the needs and concerns of transgender and gender-expansive students to ensure safe, supportive, and healthy school environments where every child can learn. This Regulation is intended to: 1) ensure that all students are welcomed, valued, included, and respected; 2) to help schools ensure safe learning environments free of discrimination, harassment, and bullying; and 3) to promote the educational and social integration of transgender and gender-expansive students. This Regulation does not and cannot anticipate every situation that may occur, as every student is unique. The support for each student must be assessed and addressed individually based upon the student’s specific requests and needs.

This Regulation is supported by District Policy 102 (Equal Education Opportunity), 413 (Harassment and Violence), 514 (Bullying Prohibition Policy), 515 (Protection and Privacy of Pupil Records, 522 (Title IX Sex Nondiscrimination Policy, Grievance Procedure and Process), and 525 (Violence Prevention).

1. Definitions

The definitions contained in the policy are not intended to label students, but rather to assist in understanding this policy and the legal obligations of district staff. It is recognized that students might or might not use these terms to describe themselves.

“*Gender Identity*” is a person’s deeply held sense or psychological knowledge of their own gender, regardless of the sex or gender they were assigned at birth. A person’s gender identity can be the same or different than the sex or gender assigned at birth.

“*Gender Expression*” refers to the manner in which a person represents or expresses that person’s gender identity to others, often through behavior, clothing, hairstyles, activities, or mannerisms.

“Transgender/Trans” describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.

“Gender Non-Conforming” describes people whose gender expression differs from social expectations, such as “feminine” boys, “masculine” girls, and those who are perceived as androgynous. This phrase also includes people who identify outside traditional gender categories.

“Gender-expansive” describes someone with a more flexible gender identity than might be associated with a typical gender binary.

2. Privacy/Confidentiality

Information related to a student’s transgender and gender-expansive status is private data under the Minnesota Government Data Practices Act and the Family Educational Rights and Privacy Act (FERPA); therefore, there are limitations on when such data may be shared. To ensure the privacy rights of students, District personnel shall not disclose information that reveals a student’s transgender or gender-expansive status to others, unless:

1. by written consent of a parent/legal guardian or student.;
2. the information is needed by other school personnel within the District who have a legitimate educational interest in the information in order to perform their duties or provide services to the student;
3. the person is a parent or legal guardian of the student; or (4) a federal or state law compels disclosure (i.e. health emergency, court order or subpoena). Parents/guardians have full access to information regarding their children, except in very limited circumstances where a determination has been made that access is not in the best interest of the child (i.e. to protect from physical or emotional harm.) Parents/guardians may not be denied access to any existing educational record unless the student is enrolled full-time in a postsecondary institution or has attained the age of 18.

In some cases, with the consent of the student and parents/guardians, District staff will develop a plan to inform and educate the student’s peers and/or engage external resources to assist in the support of students dealing with transgender or gender-expansive issues.

3. Official School Records

The school district is required to maintain a mandatory and permanent student record (“official record”) that includes a student’s legal name and gender. The school district is not required to use a student’s legal name and gender on other school records or documents.

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English

The school district will change a student's official record to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order or other official government action.

In situations where school district staff or administrators are required by law to use or report a transgender or gender-expansive student's legal name or gender, such as for purposes of standardized testing, school staff and administrators shall adopt practices intended to minimize the likelihood of inadvertent disclosure of confidential or private information relating to a student's gender identity or gender expression to parties lacking a legitimate educational interest in that information.

4. Student Names, Pronouns, and Gender Markers

A student may request that the student be referred to by a name and pronouns that correspond to the student's gender identity by all school staff and fellow students. Parent(s)/Guardian(s) have a right to request that the District change the student's name and/or gender marker in the school's student information system. A court-ordered name change or official gender change is not required, and the student is likewise not required to change the school's official records in order to be addressed by the name and pronouns that correspond to the student's gender identity.

5. Gender-Segregated Activities

To the extent possible, schools should reduce or eliminate the practice of segregating students by gender.

6. Gender-Segregated Facilities

Transgender and gender-expansive students shall have access to gendered facilities and school-sponsored programs that are consistent with the student's gender identity. This includes, but is not limited to, multi-stalled gendered restrooms, locker rooms, and school programs, trips, and athletic programs.

a. Restroom Accessibility

Pursuant to state law, students shall have access to the restroom that corresponds to their gender identity asserted at school:

- i. Any student who has a need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided access to a single user restroom.
- ii. No student shall be required to use a single user restroom because they are transgender or gender-expansive.
- iii. The District shall work with each gender-expansive student to determine which restrooms are most comfortable for the student.
- iv. In no case shall a transgender or gender-expansive student be required to use a restroom that conflicts with the student's gender identity.

b. Locker Room Accessibility

The use of locker rooms by transgender and gender-expansive students shall be assessed on an individualized basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports and other school activities, ensuring the student's safety and comfort, and minimizing stigmatization of the student.

- i. Unless the student requests otherwise, transgender and gender-expansive students should have access to the locker room that corresponds to the student's gender identity asserted at school, like all other students.
- ii. Any student who has the need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided with a reasonable alternative changing area such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a physical education instructor's office in or near the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponding to gender identity before or after other students).
- iii. Any alternative arrangement should be provided in a manner that protects the student's ability to keep the student's transgender or gender-expansive status confidential.
- iv. The District shall work with each gender-expansive student to determine which restrooms and locker room facilities are most comfortable for the student.

- v. In no case shall a transgender or gender-expansive student be required to use a locker room that conflicts with the student's gender identity.

7. Physical Education and Health Education Classes and Intermural Sports

Transgender and gender-expansive students shall be permitted to participate in physical education classes, health education classes, and intramural sports and activities in a manner consistent with their gender identity or in a manner that allows the student to feel the safest, included, and most comfortable.

Students in physical education classes may be grouped by ability, so long as a student's ability is based on objective standards of individual performance. A student's gender identity shall not be considered when assessing ability.

Physical education and health education teachers and staff will make their best efforts not to divide students based on sex assigned at birth or gender identity during any activities or classes.

8. School Trips

All students shall be permitted to participate in all school trips in a manner that corresponds with their gender identity or in a manner that allows the student to feel the safest, included, and most comfortable. In planning school trips, staff is expected to assess the student's need in collaboration with the student and/or the student's parent(s)/guardian(s).

9. Dress Codes

Transgender and gender-expansive students have the right to dress in a manner consistent with their gender identity or gender expression, including at school-sponsored functions such as dances, after school activities, and graduation. The District's rules regarding clothing will be enforced consistently, regardless of a student's gender identity or expression.

10. Interscholastic Competitive Sports Teams/Activities

Transgender and gender-expansive students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and in compliance with the applicable regulations of the Minnesota State High School League (MSHSL).

11. Staff Training and Compliance

All District staff shall be informed of the existence of this Regulation. The District will, at intervals to be determined by the District, provide staff training on this Regulation and how to support transgender or gender-expansive students.

12. Discrimination/Harassment/Bullying

It is the policy of the District to maintain a safe and supporting learning and educational environment that is free from harassment, intimidation, violence, and/or bullying and free from discrimination on account of gender, gender identity, and gender expression.

Complaints alleging misconduct based on a student's actual or perceived transgender status or gender non-conformity shall be investigated and addressed pursuant to the applicable School District policy. For information about the types of conduct that constitute violation of the school district's policy on harassment and violence and the school district's procedures for addressing such complaints, refer to the school district's policy on harassment and violence (Policy 413). For information about the types of conduct that constitute violation of the school district's policy on bullying and the school district's procedures for addressing such complaints, refer to the school district's policy on bullying (Policy 514).

[BACK TO BOARD POLICIES \(/FS/PAGES/638\)](#)

Exhibit L



Guidelines for Supporting Student And Employee Gender Identity and Gender Expression

Administrative Procedure: 413.2

Section: 400 Employees/Personnel

Adopted Date: 02/13/23

Date Revised: 02/13/23

Date Reviewed: 02/13/23

These administrative guidelines set forth Moorhead Area Public Schools ("District") procedures for schools to address the needs of students and employees, regardless of gender identity and expression, to ensure safe, supportive, and healthy school environments where every child can learn. These Guidelines are intended to:

1. ensure that all individuals are welcomed, valued, included, and respected;
2. to help schools ensure safe learning and working environments free of discrimination, harassment, and bullying; and
3. to promote the educational and social integration of transgender and gender-expansive students.

This procedure does not and cannot anticipate every situation that may occur, as every individual is unique. The support for each individual must be assessed and addressed individually based upon the specific requests and needs. In all cases, the goal is to ensure the safety, comfort, and healthy development of the students while maximizing the students' social integration and minimizing stigmatization of the students. Similarly, for employees, the goal is to ensure a safe and supportive working environment.

1. Definitions

The definitions contained in the policy are not intended to label individuals, but rather to assist in understanding this policy and the legal obligations of district staff. It is recognized that students might or might not use these terms to describe themselves.

“Gender” refers to the socially constructed roles, behaviors, activities, and attributes that a given society attaches to femininity or masculinity.

“Gender Binary” refers to the social construction of a gender dichotomy between masculinity and femininity. The gender binary often ignores or denigrates alternate gender constructions.

“Gender Identity” is a person’s deeply held sense or psychological knowledge of their own gender, regardless of the sex or gender they were assigned at birth. A person’s gender identity can be the same or different than the sex or gender assigned at birth.

“Gender Expression” refers to the manner in which a person represents or expresses that person’s gender identity to others, often through behavior, clothing, hairstyles, activities, or mannerisms.

“Gender Non-Conforming” describes people whose gender expression differs from social expectations, such as “feminine” boys, “masculine” girls, and those who are perceived as androgynous. This phrase also includes people who identify outside traditional gender categories.

“Gender-expansive” describes someone with a more flexible gender identity than might be associated with a typical gender binary.

“Transgender/Trans” describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.

“Sex” refers to a person’s biology and is generally categorized as male, female, or intersex.

“Intersex” refers to a combination of features that distinguish male and female anatomy.

2. Privacy

All individuals have a right to privacy, including the right to keep private one’s gender identity or expression status, at school. Individuals have the right to discuss and express their gender identity and expression openly and to decide when, how, and with whom to share private information, well as to determine what information will be shared. Based on the information, the educator or administrator and student should determine how to proceed through a collaborative, intentional, and ongoing process of how the school can support the student and balance the student’s need to be affirmed at school.

Privacy and confidentiality are critically important for transgender or gender-expansive students and inadvertent disclosures could put the student in potentially dangerous situations. To ensure the safety and well-being of the student, District employees shall not disclose a student's gender identity, sex assigned at birth, transgender identity, or information that may reveal a student's gender identity (e.g., birth name) to anyone, including, but not limited to, other staff members, individuals, or parents of other individuals, unless such disclosure has been authorized by the student or their parent(s)/guardian(s). If such a disclosure is necessary, it will be documented in writing and should be discussed with the student in advance.

Information about a student's transgender or gender-expansive status, legal name, or gender assigned at birth may constitute private data under state and federal law. School district personnel shall not disclose information that may reveal a student's gender identity to others, including parents and other school personnel, unless legally required to do so or unless the student has authorized such disclosure. Staff may not withhold information from a parent/guardian of a student who is under the age of 18 if the parent/guardian specifically requests information regarding the student's gender identity, gender expression, or transgender status at school.

In some cases, individuals may feel more supported and safer if other individuals are aware that they are transgender or gender-expansive. In such cases, district staff should work closely with the student, family, and other staff members on a plan to inform and educate the student's peers and shall document the plan. In some circumstances, it may also be appropriate to engage external resources to assist with educational efforts.

Families play a vital role in helping students navigate issues of gender identity. Pursuing relationships, open discussion, removing pressure, and seeking help from trustworthy people can support a safe and supportive environment for your student.

3. Student Transition Meeting

The principal or designee shall request a meeting with the transgender or gender nonconforming student and their parent/guardian upon the student's enrollment in the District or in response to a currently enrolled student's change of gender expression or identity to ensure a collaborative, intentional and ongoing process of support.

The goals of the meeting are to:

1. Develop and understanding of the student's individual needs with respect to their gender expression or gender identity, including any accommodations that the student is requesting or that the District may provide according to district policy and procedure, and/or under state and federal law, and

2. Develop a shared understanding of the students day-to-day routine within the school so as to foster a supportive relationship and help alleviate any apprehensions the student may have with regard to their attendance at school.

The school may not require a student to attend a meeting as a condition of providing them with the protection to which they are entitled under district policy and procedure, and/or state and federal law regarding gender expression or gender identity.

4. Student Official School Records

The school district is required to maintain a mandatory and permanent student record (“official record”) that includes a student’s legal name and gender. The school district is not required to use a student’s legal name and gender on other non-official school records or documents.

The school district will change a student’s “official record” to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order or other official government action.

In situations where school district staff or administrators are required by law to use or report a student’s legal name or gender, such as for purposes of standardized testing, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of confidential or private information relating to a student’s gender identity or gender expression.

5. Student Names, Pronouns, and Gender Markers

A student has the right to request that the student be referred to by a name and pronouns that correspond to the student’s gender identity by all school staff and fellow students. Parent(s)/Guardian(s) have a right to request that the District change the student’s name and/or gender marker in the school’s student information system. A court-ordered name change or official gender change is not required, and the student is likewise not required to change the school’s official records in order to be addressed by the name and pronouns that correspond to the student’s gender identity.

A request to change the name, pronoun, or gender marker in the student information system can be made through the school counselor or building administrator. Documentation of the request will be required prior to approval.

The intentional or persistent refusal to respect a person’s gender identity (for example, intentionally referring to the student by a name or pronoun that does not correspond to

the student's gender identity) is a violation of MAPS Policy 413, Prohibition of Harassment and Violence.

6. Gender-Segregated Student Activities

To the extent possible, schools should reduce or eliminate the practice of segregating students by gender. In situations where students are segregated by gender, students should be included in the group that corresponds to their gender identity.

7. Gender-Segregated Facilities

Students shall have access to gendered facilities and school-sponsored programs that are consistent with the student's gender identity. This includes but is not limited to, multi-stalled gendered restrooms, locker rooms, school programs, trips, and athletic programs.

a. Restroom Accessibility

Pursuant to state law, students shall have access to the restroom that corresponds to their gender identity asserted at school:

- i. Any student who has a need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided access to a single-user restroom.
- ii. No student shall be required to use a single-user restroom because of their identified gender identity or expression.
- iii. The District shall work with each gender-expansive student to determine which restrooms are most comfortable for the student.
- iv. In no case shall a student be required to use a restroom that conflicts with the student's gender identity or expression.

b. Locker Room Accessibility

The use of locker rooms by individuals shall be assessed on an individualized basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports and other school activities, ensuring the student's safety and comfort, and minimizing stigmatization of the student.

- i. Unless the student requests otherwise, students should have access to the locker room that corresponds to the student's gender identity or expression asserted at school, like all other students.
- ii. Any student who has the need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided with a reasonable alternative changing area such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a physical education instructor's office in or near the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponding to gender identity before or after other students).
- iii. Any alternative arrangement should be provided in a manner that protects the student's ability to keep the student's status confidential.
- iv. The District shall work with each gender-expansive student to determine which restrooms and locker room facilities are most comfortable for the student.
- v. In no case shall a student be required to use a locker room that conflicts with the student's gender identity.

8. Physical Education and Health Education Classes and Intramural Sports

Students shall be permitted to participate in physical education classes, health education classes, and intramural sports and activities in a manner consistent with their gender identity or expression, and in a manner that allows the student to feel the safest, included, and most comfortable.

Students in physical education classes may be grouped by ability, so long as a student's ability is based on objective standards of individual performance. A student's gender identity shall not be considered when assessing ability.

Physical education and health education teachers and staff will make their best efforts not to divide students based on sex assigned at birth or gender identity during any activities or classes.

9. School Trips

All students shall be permitted to participate in all school trips in a manner that corresponds with their gender identity or expression, and in a manner that allows the student to feel the safest, included, and most comfortable. In planning school trips, staff is expected to assess the student's need in collaboration with the student and/or the student's parent(s)/guardian(s) and make reasonable efforts to provide an accommodation that is acceptable to the student.

Accommodations will be discussed in advance of the trip on a case-by-case basis and will be documented in writing.

10. Dress Codes

Individuals have the right to dress in a manner consistent with their gender identity or expression, including at school-sponsored functions such as dances, after-school activities, and graduation. District policy regarding clothing will be enforced consistently, regardless of a student's gender identity or expression.

A student whose gender expression is different from expectations based on the student's sex assigned at birth will not be considered disruptive of the educational process or as an interference with the maintenance of a positive teaching/learning climate.

11. Interscholastic Competitive Sports Teams/Activities

Students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and expression, and in compliance with the applicable regulations of the Minnesota State High School League (MSHSL).

12. Specific Guidelines for Employees

a. Names, Pronouns, and Gender Markers

i. Employees have the right to be addressed by a name and pronoun that correspond to the employee's gender identity. A court-ordered name or gender change is not required.

li. An employment record may be changed to reflect a change in name or gender upon request from the employee. Certain types of records, like those relating to payroll and retirement accounts, may require a legal name change before the person's name can be changed.

iii. The intentional or persistent refusal to respect a person's gender identity (for example, intentionally referring to the employee by a name or pronoun that does not correspond to the employee's gender identity) is a violation of MAPS Policy 413, Prohibition of Harassment and Violence

b. Restrooms

i. Employees shall have access to the restroom corresponding to their gender identity.

ii. Any employee who has a need or desire for increased privacy, regardless of the underlying reason, will be provided access to a single-stall restroom, when available. No employee, however, shall be required to use such a restroom.

iii. All employees have a right to safe and appropriate restroom facilities, including the right to use a restroom that corresponds to the employee's gender identity, regardless of the employee's sex assigned at birth. That decision should be left to the employee to determine the most appropriate and safest option for them.

c. Dress Code

i. Individuals have the right to dress in a manner consistent with their gender identity or expression, including at school-sponsored functions such as dances, after school activities, and graduation. District policy regarding clothing will be enforced consistently, regardless of a person's gender identity or expression.

13. Staff Training and Compliance

All administrative staff shall be informed of the existence of this procedure. The District will provide training regarding this procedure and how to support individuals at reasonable intervals, to be determined by the District.

District employees who refuse to abide by this procedure may be subject to disciplinary actions, up to and including termination, as set forth in the relevant employee discipline policy. The intentional or persistent refusal to respect a person's gender identity (for example, intentionally referring to the student by a name or pronoun that does not correspond to the student's gender identity) is a violation of MAPS Policy 413, Prohibition of Harassment and Violence.

14. Discrimination/Harassment/Bullying

It is the policy of the District to maintain a safe and supporting learning and educational environment that is free from harassment, intimidation, violence, and/or bullying and free from discrimination on account of gender, gender identity, and gender expression.

Complaints alleging discrimination or harassment based on an individual's actual or perceived gender identity, non-conformity, or expression generally are to be handled in the same manner as sex discrimination, harassment, or bullying complaints. For information about the types of conduct that constitute violation of the school district's policy on harassment and violence and the school district's procedures for addressing such complaints, refer to the school district's policy on harassment and violence (MAPS Policy 413). For information about the types of conduct that constitute violation of the school district's policy on bullying and the school district's procedures for addressing such complaints, refer to the school district's policy on bullying (MAPS Policy 514).

Exhibit M

[Hopkins Public Schools \(/\)](#) > [District \(/district\)](#) > [Policies \(/district/policies\)](#) > 552: Gender Inclusion

552: Gender Inclusion

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I. PURPOSE

All students need a safe, supportive school environment to progress academically and developmentally. The purpose of this policy is to facilitate compliance with applicable laws and organizational guidelines as well as to foster an educational environment at Hopkins Public Schools that is safe, supportive, and fully inclusive for all students regardless of gender identity or gender expression.

II. POLICY STATEMENT

Hopkins Public Schools shall act to ensure that students who are transgender and gender non-conforming are included in all school activities and have equal access to all programs offered by the District like their peers.

III. DEFINITIONS

The following definitions are provided to assist in understanding this policy.

- A Assigned Gender – An individual’s gender assigned at birth, which may correlate to visual manifestations of the biological, genetic, and anatomical makeup of a body.
- B Gender Expression – The manner in which an individual realizes and manifests their gender.
- C Gender Fluid - Denoting or relating to a person who does not identify themselves as having a fixed gender.
- D Gender Identity – An individual’s knowledge of being male, female, or otherwise on a continuum of gender.

- E. Gender Non-Conformity – Behaviors and interests that fit outside of stereotypical behaviors and interests for an individual's assigned sex.
- F. Nonbinary Gender - Umbrella term to describe any gender identity that does not fit into the gender binary of male and female
- G. Transgender – An individual whose gender identity or gender expression is different from the gender stereotype for that person's assigned gender.

IV. BULLYING, HARASSMENT, AND DISCRIMINATION PROHIBITION

Bullying, harassment, and discrimination on the basis of gender identity or expression are prohibited. Hopkins Public Schools will take any such incident seriously, give the incident immediate attention, and handle the incident in the same manner as the school handles other bullying, harassment and discrimination. The school and all employees are responsible for ensuring that every student, including transgender and gender nonconforming students, has a safe and supportive school environment at Hopkins Public Schools. Education and training regarding the issues addressed in this gender inclusion policy will be provided for employees, students and the broader school community.

V. GENDER TRANSITION AT SCHOOL

Students who transition socially at school have a right to a safe and supportive environment. School administration and staff shall work with any such students and their parents/guardians to identify which steps will create the necessary conditions to make the transition experience as positive as possible. Based on this work, the school, student, and parents/guardians may choose to create a tailored gender transition plan that ensures the school environment remains both safe and supportive of the student.

School staff will not control the timelines or manner of transition for transgender and nonbinary students.

VI. NAMES AND PRONOUNS USAGE

Students have the right to be addressed by a preferred name and by a pronoun corresponding to their gender identity. A court-ordered name or gender change is not required, and a student need not change official records in order to have this right honored by all members of the school community. Every effort to accommodate gender non-conforming identities will be made by school officials, including expanding the options for gender selection on school forms.

Official records must identify a student with their legal name and assigned gender, unless the student has legally changed their name.

VII. DRESS CODE

Students have the right to dress in accordance with their gender identity, within the constraints of the dress code specified in the Hopkins Public Schools' handbook or policy. School staff will not enforce the school's dress code more strictly toward transgender and gender nonconforming students than other students. Hopkins Public Schools will not require gender stereotypical fashion or dress, and seek gender parity in its dress codes. Hopkins Public Schools will avoid the use of gender pronouns when describing dress in its dress code.

VIII. GENDER-SEGREGATED ACTIVITIES, RULES, POLICIES AND PRACTICES

Hopkins Public Schools will continually evaluate all gender-based activities, curricula, rules, policies, and practices – including but not limited to classroom activities, school ceremonies, and school photos – and maintain only those that have a clear and sound pedagogical purpose.

In situations where students are segregated by gender, students have the right to participate in any such activities or conform to any such rule, policy, or practice in a manner that aligns with their gender identity. The district will make reasonable accommodations to curriculum to accommodate students whose gender identity aligns outside the binary male and female constraints. Appropriate curriculum adaptation, as well as staff training, will be provided.

All students, regardless of their gender identity, have the right to participate fully in overnight trips and other activities. In all cases, the school has an obligation to maintain the privacy of all students and cannot disclose or require the disclosure of the student's gender status to the other students or the parents/guardians of other students.

IX. PHYSICAL EDUCATION CLASSES AND INTRAMURAL AND INTERSCHOLASTIC ATHLETICS

All students have the right to participate in physical education classes, intramural sports, and interscholastic athletics in a manner that aligns with their gender identity. This choice shall not infringe on their right to full participation.

X. ACCESS TO FACILITIES

Each student shall be granted access to facilities including, restrooms, locker rooms, and changing areas that align with the student's gender identity. Any student who has a need or desire for increased privacy, regardless of the underlying reason, shall be provided access to a reasonable alternative, such as a gender neutral facility, but no student shall be required to use such a facility.

XI. PRIVACY

All students have a right to privacy. A student's transgender or gender nonconforming status is private information. The fact that a student chooses to disclose their gender status to staff or other students does not authorize school staff to disclose other private information about the student.

XII. IMPLEMENTATION

To ensure uniform implementation of this policy across the district, Administration will provide the necessary education and training to staff and students and will create supportive materials for students and staff.

Legal Reference:

Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)

Minn. Stat. § 363A (Minnesota Human Rights Act)

20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)

34 C.F.R. Part 106 (Implementing Regulations of Title IX)

Montgomery v. ISD No. 709, 109 F.Supp. 2d 1081, 1093 (D. Minn. 2000).

Bostock v. Clayton County, 140 S. Ct. 1731, 590 U.S. ____ (2020)

Cross References:

MSBA/MASA Model Policy 102 (Equal Educational Opportunity)

MSBA/MASA Model Policy 514 (Bullying Prohibition Policy)

MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

MSBA/MASA Model Policy 522 (Student Sex Nondiscrimination)

MSBA/MASA Model Policy 525 (Violence Prevention)

MSBA/MASA Model Policy 526 (Hazing Prohibition)

MSBA/MASA Model Policy 528 (Student Parental, Family, and Marital Status Nondiscrimination)

Adopted: April 27, 2021

Revised: Type date here

Reviewed: Type date here

500: STUDENTS

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Exhibit N

102.0G Equal Educational Opportunity Policy - Gender Inclusion Guidance

I. Purpose: The purpose of Guidance is to support all students regardless of gender identity and to ensure compliance with the Minnesota Human Rights Act and Title IX of the Education Amendments of 1972 and corresponding regulations.

Rewritten and
Adopted: September
23, 2024

II. General Statement of Guidance:

- A. The District is committed to providing a safe and respectful learning environment and to providing an education that respects all students and families.
- B. Students of all gender identities are valued and welcome in the District.
- C. School administration and staff must act in the best interests of students when accommodating gender identity requests.
- D. School administration and staff must respect the right of parents/guardians in the care, custody, and control of their minor children. ¹Except in exceptional circumstances outlined in this guidance (See § VI), staff must not actively and deliberately withhold information about a student from parents/guardians in a manner that impedes upon parental rights.
- E. School administration and staff will engage in an interactive process with both students and parents/guardians that supports the student when they receive requests to accommodate or support the gender identity of a student.

III. Names and Pronouns: Students and their parents/guardians may request a change to their forenames/pronouns that differ from their previously used forename/pronouns or from their forename on their birth certificate.

A. Name of Student in Data Management Systems.

Students and their parents/guardians (in the case of minor students) who want to have school staff address them by a forename or pronoun that differs from their previously used forename/pronoun or from their forename on their birth certificate should contact or will be directed to the appropriate school official who will assist the student and parents/guardians in processing their request. For high school and middle school students the appropriate school official is either the Title IX coordinator or school counselor/social worker. For elementary students the appropriate school official is either the school social worker or the assistant principal. After a name change and planning guide is completed, the student's requested/preferred name will be changed in the District's student data management system (i.e. Synergy or other program in use by the District) as requested. The name of the student listed in the District's student data management system will be utilized in all of the following:

- Class rosters
- Student identifications (ID's)
- Extracurricular, co-curricular and other student activities
- Graduation ceremonies (see, below for further information on diplomas)
- Student year books
- Student email

Staff and administration will be expected to utilize the name of the student listed in the District's student management system.

B. Official Transcripts. Current and former students who want to change the name on their official District transcript must first obtain proof of a legal name change pursuant to Minn. Stat. § 259.10 or similar statute in a U.S. jurisdiction outside of Minnesota.

C. School Diplomas. School diplomas will be printed using the student's name listed in the District's student data management system. Acceptable change of a student's forename used on a diploma will be limited to the following:

- A middle name instead of first name
- An abbreviated name (Rob instead of Robert, Manny instead of Emmanuel)
- An Americanized name (Wendy instead of Haiyan)
- A name which better reflects one's ethnic, racial or gender identity
- A name to which you are in the process of legally changing

D. Use of Nicknames. Nothing in District policy or procedure is intended to limit staff and administrations' use of appropriate and respectful nicknames for all students. However, the use of nicknames with students must not be actively and deliberately withheld from parents/guardians of minor students.

E. Student Surveys. Instructional staff must not utilize surveys or questionnaires that solicit information about a student's gender identity or pronoun. However, students will be free to state their preferences in broader inquiries. (e.g. "Is there anything else you would like me to know about you to support you or to be successful in this

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class?”)

IV. Rest Rooms and Locker Rooms: The District will provide all students with access to use all facilities consistent with the students' gender identity. Reasonable efforts must be made to have restrooms and locker rooms with private enclosed changing areas, shower areas, and toilets for all students. Upon their voluntary request, any student who desires increased privacy shall be provided with a reasonable alternative changing area (e.g., a nearby restroom stall with a door, an area separated by a privacy partition changing area or with a separate changing schedule). Transgender and gender non-conforming students may only be required to use individual-user or otherwise separate facilities if every student is required to do so. The goal should be maximizing students' social integration and equal opportunity to participate in physical education classes and sports, ensuring the students' safety and comfort, and minimizing stigmatization of students.

V. Gendered Activities: Gender is often used as a classification for dividing classes into parts or as a prerequisite for participation. Staff and administration should avoid using gender as a characteristic for divisions whenever possible. When groups are separated by gender, students and parents/guardians (in the case of minor students) should be permitted to select their gender grouping. The Minnesota State High School League has also adopted a policy addressing eligibility determination for male-to-female transgender student athletes stating in general that all students, regardless of their gender identity or expression, should be allowed to participate in athletics in an “environment free from discrimination”.

VI. Data Privacy Considerations: Under both state and federal law, information and data regarding one's transgender status or sex assigned at birth is classified as

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private educational data. Only employees with a legitimate educational reason to know this information in order to perform their job have the right of access to this data.

Transgender and gender non-conforming students may decide to discuss and express their gender identity openly or may decide when, with whom, and how much to share private information. Schools should work closely with the student and family in devising a plan that works for both the student and the school. Privacy considerations may also vary with the age of the student.

Parents/guardians of minor children have a right of access to data on their child unless a court order provides otherwise or in keeping with Minnesota law (Minn. R. 1205.0500) the student makes a written request that particular data be withheld and the Superintendent approves the requests consistent with applicable legal standards. Students making such a request should use the following form. Minor Student Request to Deny Parent/Guardian Access to Private Data.

VII. Complaints Regarding Compliance with Guidance.

Students and parents/guardians (in the case of minor students) can file a complaint for failure to comply with these guidelines or if they otherwise believe that their rights have been violated under Title IX or the Minnesota Human Rights Act. Information on how to file a complaint is contained in Harassment, Violence and Discrimination Policy 413.0 and Harassment, Violence, Discrimination or Bullying Report Form 413.0F. Contact Assistant Director of Student Services, Denise Collins at 763- 506-1120 or at denise.collins@ahschools.us for additional information.

Harassment or discrimination complaints based upon a student's gender identity can also be filed with:

Minnesota Department of Human Rights

540 Fairview Ave North, Suite 201

Saint Paul, MN 55104

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Email: info.mdhr@state.mn.us

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Dept. of Education Building
400 Maryland Ave., SW
Washington, DC 20202-1100
Email: OCR@ed.gov

¹In the case of divorced or separated parents, only parents who possess or have been assigned legal custody by a proper court are allowed to make educational decisions on behalf of a minor student.

Exhibit O

I. PURPOSE

All students need a safe, supportive school environment to progress academically and developmentally. The purpose of this policy is to facilitate compliance with applicable laws and organizational guidelines as well as to foster an educational environment at Richfield Public Schools that is safe, supportive, and fully inclusive for all students regardless of gender identity or gender expression.

II. POLICY STATEMENT

Richfield Public Schools shall act to ensure that all students, regardless of their gender identity or expression are included in all school activities like their peers.

III. DEFINITIONS

The following definitions are provided to assist in understanding this policy.

- a. Gender Expression – The way in which an individual presents their gender through actions, dress, and demeanor and how those presentations are interpreted.
- b. Gender Identity – An individual's sense of being a girl/woman, boy/man or otherwise on a continuum of gender.
- c. Nonbinary – Describes an individual whose gender identity falls outside of the traditional structure of girl/woman and boy/man. Other terms that are sometimes used are genderqueer and gender fluid.
- d. Sex Assigned at Birth – An individual's sex (female, male, or intersex) assigned at birth, which correlates to the biological, genetic, and anatomical makeup of a body.
- e. Trans/Transgender – Describes an individual whose gender identity is different from the gender that traditionally corresponds to the sex assigned to them at birth.

III. BULLYING, HARASSMENT, AND DISCRIMINATION PROHIBITION

Bullying, harassment, and discrimination on the basis of gender identity or expression are prohibited. Richfield Public Schools will take any such incident seriously, give the incident immediate attention, and handle the incident in the same manner as the school handles other bullying, harassment and

discrimination. Staff will take extra care to ensure that no private information about a victim of bullying or harassment (such as a student's transgender or nonbinary identity) is disclosed in the process of investigating and/or handling an incident of bullying or harassment.

The school and all employees are responsible for ensuring that every student, regardless of their gender identity or expression, has a safe and supportive school environment at Richfield Public Schools. Education and training regarding the issues addressed in this gender inclusion policy will be provided for employees, students and the broader school community. Richfield Public Schools will ensure that all District policies, including but not limited to Policy 102: Equal Educational Opportunity, Policy 103: Harassment Prohibition, Policy 108: Hazing Prohibition, Policy 113: Bullying Prohibition, Policy 505: Student Disability Nondiscrimination, Policy 506: Student Sex Nondiscrimination, Policy 541: Student Behavior and Policy 581: Protection and Privacy of Pupil Records apply to all students regardless of their gender identity or gender expression.

IV. GENDER TRANSITION AT SCHOOL

Students who transition socially or physically at school have a right to a safe and supportive environment. Steps taken to support students during this time will be done in collaboration with the student first, then the parent/guardian, with careful consideration given to student data privacy and consent. If appropriate, school administration and staff shall work with any such students and their parents/guardians (based on the individual student needs) to identify which steps will create the necessary conditions to make the transition experience as positive as possible. Based on this work, the school, student, and parents/guardians will create a tailored gender transition plan that ensures the school environment remains both safe and supportive of the student. As each possible plan will be highly individualized, the plan will be developed in collaboration with the student, parent/guardian, school principal, director of student support services, the lead social worker, and/or additional appropriate school staff. If a student, due to extraordinary circumstances, cannot reasonably obtain parent/guardian consent to have a gender transition plan at school and/or expresses a good faith desire for increased privacy and/or safety, an adult advocate will be identified with the student to create the gender transition plan.

V. NAMES AND PRONOUNS USAGE

Students have the right to be addressed by a preferred name and by a pronoun corresponding to their gender identity. A court-ordered name or gender change is not required, and a student need not change official records in order to have this right honored by all members of the school community. Official school records, including report cards, transcripts, class lists, course schedules, standardized

testing information, health records and discipline files, etc. must identify a student with their legal name and sex assigned at birth, unless the student has legally changed their name or the sex on their birth record.

VI. DRESS CODE

Students have the right to dress in accordance with any form of gender expression, within the constraints of the dress expectations specified in Policy 547: Student Dress and Appearance. School staff will enforce the school's dress expectations in the same manner regardless of a student's gender identity or expression. Richfield Public Schools will not require gender stereotypical fashion or dress. Richfield Public Schools will not use gendered language when describing dress in Policy 547: Student Dress and Appearance.

VII. GENDER-SEGREGATED ACTIVITIES, RULES, POLICIES AND PRACTICES

Richfield Public Schools shall evaluate all gender-based activities, curricula, rules, policies, and practices – including but not limited to classroom activities, school ceremonies, and school photos – and maintain only those that have a clear and sound pedagogical purpose. In situations where students are segregated by gender, students have the right to participate in any such activities or conform to any such rule, policy, or practice in a manner that aligns with their gender identity consistently asserted at school.

All students, regardless of their gender identity, have the right to participate fully in overnight trips, clubs and other activities. In all cases, the school has an obligation to maintain the privacy of all students and cannot disclose or require the disclosure of the student's gender identity to the other students or the parents/guardians of other students.

VIII. PHYSICAL EDUCATION CLASSES AND INTRAMURAL AND INTERSCHOLASTIC ATHLETICS

All students have the right to participate in physical education classes, intramural sports, and interscholastic athletics in a manner that aligns with their gender identity. For participation on interscholastic athletic teams, this policy will not supersede Minnesota State High School League policy related to transgender student eligibility and participation.

IX. ACCESS TO RESTROOMS, LOCKER ROOMS, AND CHANGING AREAS

Each student shall be granted access to restrooms, locker rooms, and changing areas that align with the student's gender identity. Any student who has a need or desire for increased privacy, regardless of the underlying reason, shall be provided access to a reasonable alternative that is adequately clean

and safe, but no student shall be required to use such a facility.

X. PRIVACY

All students have a right to privacy. A student's transgender or nonbinary status is private information. Related information, such as the student's legal name, may also constitute private information. Information regarding a student's transgender or nonbinary status may also be confidential medical information. Disclosing this information to other students, other students' parents, or other third parties may violate privacy provisions in certain laws, such as the federal Family Educational Rights and Privacy Act (FERPA) and the Minnesota Government Data Practices Act. Disclosure of this information to school employees is also limited to those employees who have a legitimate educational reason for obtaining the information.

Richfield Public Schools shall keep private all personal information relating to transgender and nonbinary students in accordance with Board Policy 581 and applicable laws. School staff shall not disclose information that may reveal a student's transgender or nonbinary status to others, including other students' parents/guardians and other school staff, unless legally required to do so or when written permission has been given by the parent/guardian or the student who is over 18 years of age.

All students have the right to discuss their gender identity and express their gender openly and to decide when, with whom, and how much private information to share. The fact that a student chooses to disclose their transgender or nonbinary status to staff or other students does not authorize school staff to disclose any private information about the student.

Legal References:

Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)

Minn. Stat. § 121A.031 (Safe and Supportive Minnesota Schools Act)

Minn. Stat. § 121A.03, subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)

Minn. Stat. § 363A (Minnesota Human Rights Act)

20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)

34 C.F.R. Part 106 (Implementing Regulations of Title IX)

Montgomery v. ISD No. 709, 109 F.Supp. 2d 1081, 1093 (D. Minn. 2000).

Cross References:

Policy 102: Equal Educational Opportunity

Policy 103: Harassment Prohibition

Policy 108: Hazing Prohibition

Policy 113: Bullying Prohibition

Policy 505: Student Disability Nondiscrimination

Policy 506: Student Sex Nondiscrimination

Policy 541: Student Behavior

Policy 547: Student Dress and Appearance

Policy 581: Protection and Privacy of Pupil Records

Policy 653: Field Trips

Minnesota State High School League Official Handbook 300.00 Bylaws: Administration of Student Eligibility

RATIFIED BY THE BOARD OF EDUCATION: August 20, 2018

REVISED BY THE BOARD OF EDUCATION: October 16, 2023

 **Board Policy 586 - Gender Inclusion Policy**
(<https://resources.finalsite.net/images/v1697558340/richfieldschoolsorg/bedi5q5f9mio9sGenderInclusionPolicy.pdf>)

Exhibit P

508 Policy: Gender Inclusion

I. SCOPE AND PURPOSE

This policy is intended to ensure student access to school district programming, activities and facilities for each student regardless of their sexual orientation, gender identity, gender expression or gender non-conformity. All students of the school district, including transgender and gender diverse students, deserve respectful and inclusive learning environments that value students' gender identity and gender expression. The school district strives to provide programming and facilities where all students feel safe and supported.

II. DEFINITIONS

A. "Gender" refers to the socially constructed roles, activities, behaviors and attributes that a given society attaches to femininity or masculinity.

B. "Gender Expression" means the manner in which persons represent or express gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.

C. "Gender Identity" means a person's deeply held sense or knowledge of one's own gender, regardless of the sex assigned at birth.

D. "Gender Non-Binary" is an umbrella term for people who transcend commonly held concepts of gender through their own expressions and identities. Other terms for this include gender diverse, gender expansive, gender creative, gender nonconforming or genderqueer. Some non-binary people also identify as transgender.

E. "Transgender" is an umbrella term describing persons whose gender identity or expression is different from that traditionally associated with the sex at birth.

F. "Gender Non-Conforming" is a term for individuals who do not fit into traditional "male" and "female" gender categories.

G. Sexual Orientation means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness.

III. GENERAL STATEMENT OF POLICY

The school district's staff and systems ensure inclusive access to programming and facilities. In accordance with this policy, and in consultation with students, parents, and/or guardians, the school district will:

A. Respect all students' sexual orientation, gender identity, gender expression and gender non-conformity.

Find Additional Policies



101 Policy: Racial Equity in Educational Achievement
(<https://www.districtus/policies/individual-policy/~board/school-board-policies/post/101-policy-racial-equity-in-educational-achievement>)

101 Procedure: Racial Equity in Educational Achievement
(<https://www.districtus/policies/individual-policy/~board/school-board-policies/post/101-procedure-racial-equity-in-educational-achievement>)

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B. Identify and address students by their preferred names and pronouns that align with their gender identity.

C. Upon written request of the student and their parent(s) or guardian(s), student names and pronouns will be changed on school district digital systems to the extent possible to align with their gender identity. Medical documentation or legal verification of a student's name change is not required.

D. Within academic programming, prohibit the separation of students and/or curricular materials based upon gender unless it serves as a legitimate pedagogical tool.

E. Provide all students the opportunity to participate in co-curricular and extracurricular activities in a manner consistent with their gender identity, including but not limited to intramural and interscholastic athletics, and in conformance with Minnesota State High School League rules and regulations, where applicable.

F. Provide all students with access to facilities that align with students' gender identity.

G. Respect the safety and privacy of all students, pursuant to District Policy 515 (Protection & Privacy of Pupil Records) and state and federal privacy laws.

H. Ensure that all district policies apply to all students, regardless of their sexual orientation, gender identity, gender expression or gender nonconformity.

I. School officials will work with families and students to identify one or more safe staff members that gender nonconforming students can access if they require additional support during the school day.

IV. REPORTING

Any person who believes there has been a violation of this policy shall report the alleged violation under the procedures set forth in Procedure 413 A.

V. PROFESSIONAL DEVELOPMENT

School district employees will receive professional development to ensure that staff understands their responsibilities pursuant to this policy.

Adopted: 7/20/21

Legal References:

Title IX of the Education Amendments of 1972

Minn. Stat. ch. 363A (Minnesota Human Rights Act)

Minn. Stat. § 121A.031 (Safe and Supportive Minnesota Schools Act)

Minn. Stat. § 121A.03, subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)

20 U.S.C. § 1701 et seq. (Equal Educational Opportunities)

[Skip To Main Content](#)

**us/policies/individual
policy/~board/school
board-
policies/post/101-
procedure-racial-
equity-in-
educational-
achievement)**

**102 Policy: Equal
Opportunity and
Prohibition
Against
Discrimination,
Harassment and
Violence
(<https://www.district279.org/about-us/policies/individual-policy/~board/school-board-policies/post/102-policy-equal-educational-and-employment-opportunity>)**

**102A Procedure:
Prohibition
Against Protected
Status
Discrimination,**

Harassment and Violence

(<https://www.districtus/policies/individual-policy/~board/school-board-policies/post/102-procedure-equal-educational-and-employment-opportunity>)

102B Procedure: Grievance Procedures for Sexual Harassment Claims

(<https://www.districtus/policies/individual-policy/~board/school-board-policies/post/102b-procedure-grievance-procedures-sexual-harassment-claim>)

104 Policy: School District Mission

[Skip To Main Content](#)

**Statement
(<https://www.district279.org/about-us/policies/individual-policy/~board/school-board-policies/post/104-policy-school-district-mission-statement>)**

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Exhibit Q

Minnesota State High School League: Executive Order 14201 does not preempt Minnesota law. Prohibiting students from participating in extracurricular activities consistent with their gender identity would violate the Minnesota Human Rights Act.

1035



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Minnesota Attorney General Keith Ellison**
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February 20, 2025

Erich Martens
Executive Director
Minnesota State High School League
2100 Freeway Boulevard
Brooklyn Center, Minnesota 55430

Re: Request for Advisory Opinion Pursuant to Minn. Stat. § 8.07

Dear Mr. Martens:

Thank you for your letter dated February 14, 2025, requesting an opinion from this Office on the legal effect of the Executive Order 14201 and whether compliance with the Executive Order would violate the Minnesota Human Rights Act.

BACKGROUND

The facts as you present them are as follows. The Minnesota State High School League (“MSHSL”) is a nonprofit voluntary association which neither solicits nor receives state or federal funding. Its authority to regulate interscholastic activities is based on Minnesota Statutes section 128C.01, subd. 1, which authorizes school boards to “delegate control of extracurricular activities” to the MSHSL. Currently 624 member schools have delegated this control to MSHSL. These member schools do receive funding from state and federal sources.

The MSHSL, together with the Minnesota Association of School Administrators and the Minnesota Association of Secondary School Principals, requests guidance on Executive Order 14201 entitled “Keeping Men Out Of Women’s Sports” (hereinafter Executive Order), which President Trump signed on February 5, 2025.

The Executive Order directs the Secretary of Education to “prioritize Title IX enforcement actions against educational institutions (including athletic associations composed of or governed by such institutions) that deny female students an equal opportunity to participate in sports and athletic events by requiring them, in the women’s category, to compete with or against or to appear unclothed before males,” (*id.* at § 3(a)(iii)) and further directs that “[a]ll executive departments

and agencies (agencies) shall review grants to educational programs and, where appropriate, rescind funding to programs that fail to comply with the policy established in this order.” *Id.* § 3(b).

QUESTIONS PRESENTED

The questions you raise are the following:

Question 1: Does the Executive Order supersede/preempt the Minnesota Human Rights Act, Minn. Stat. 363A.01, et. seq. (“MHRA”) which prohibits discrimination in education based on gender identity particularly as it relates to participation in extracurricular activities offered by the League and its member schools?

Question 2: Does the Executive Order supersede/preempt the equal protection clause contained in Article 1, Section 2 of the Minnesota Constitution particularly as it relates to participation in extracurricular activities offered by the League and its member schools?

Question 3: If a school district complies with the Executive Order and prohibits a student from participation in extracurricular activities consistent with the student’s gender identity, does this subject the district to claims for violations of the MHRA?

Question 4: If the League complies with the Executive Order and prohibits a student from participation in extracurricular activities consistent with the student’s gender identity, does this subject the League to claims for violations of the MHRA?

We interpret your questions as follows: (1) Whether the Executive Order preempts Minnesota laws, including the MHRA and the equal protection clause in Article 1, Section 2 of the Minnesota Constitution, which prohibit discrimination in education based on gender identity particularly as it relates to participation in extracurricular activities offered by the MSHSL and its member schools, and (2) Whether compliance with the Executive Order by prohibiting students from participation in extracurricular activities consistent with their gender identity violates the MHRA.

SUMMARY OF CONCLUSION

The Executive Order does not have the force of law and therefore does not preempt any aspect of Minnesota law. Complying with the Executive Order and prohibiting students from participation in extracurricular activities consistent with their gender identity would violate the MHRA.

ANALYSIS

I. THE EXECUTIVE ORDER DOES NOT SUPERSEDE MINNESOTA LAW

Where a state law and federal law conflict, the federal law can preempt the state law if it is impossible to comply with both state and federal law, and the state law is an obstacle to the accomplishment of the full purpose of Congress in enacting the relevant federal law. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000). In order to preempt state law, however, a federal action, whether taken by Congress, an executive branch agency, or by the President himself, must have the force and effect of law. *Wyeth v. Levine*, 555 U.S. 555, 576 (2009) (“[A]n agency regulation with the force of law can pre-empt conflicting state requirements.”). An executive order will only have the force and effect of laws “when issued pursuant to a statutory mandate or delegation of authority from Congress.” *Indep. Meat Packers Ass’n v. Butz*, 526 F.2d 228, 234 (8th Cir. 1975); *cf. Crosby*, 530 U.S. 374-75 (holding that Executive Order made pursuant to an “express investiture of the President with statutory authority to act for the United States” had force and effect of law such that it preempted a conflicting state statute).

The Executive Order at issue in your letter was not issued pursuant to a statutory mandate or express delegation of authority from Congress. Although the Executive Order references Title IX of the Education Amendments Act of 1972 (“Title IX”), 20 U.S.C. § 1681, *et seq.*, Title IX does not authorize the President to issue directives with the force of law or to unilaterally rescind all federal funds from all educational programs that do not comply with presidential policy preferences. *Contra Crosby*, 530 U.S. 374 (finding authorization to act with the force of law where Congress authorized the President to take certain actions if he made specific findings). In fact, Congress made it clear that the President could not, on his own, rescind federal funding from an educational program, by including a statutory provision that mandates a process, controlled by the agencies empowered to provide federal funds to educational entities, for the termination of any such funding. *See* 20 U.S.C. § 1682 (requiring “an express finding on the record, after opportunity for hearing, of a failure to comply” with a properly-issued regulation implementing Title IX’s prohibition against sex discrimination in educational programs).

Because the President does not have the authority to unilaterally rescind funding from educational programs, the Executive Order does not have the force of law and cannot supersede Minnesota state law.

II. MSHSL AND SCHOOL DISTRICTS WOULD VIOLATE THE MHRA IF THEY PROHIBIT STUDENTS FROM PARTICIPATING IN EXTRACURRICULAR ACTIVITIES CONSISTENT WITH STUDENTS’ GENDER IDENTITY.

The MHRA declares that the full utilization of or benefit from any educational institution without discrimination is a civil right. Minn. Stat. § 363A.02, subds. 1(5) & (2). The Minnesota Legislature recognized that discrimination based on a person’s membership in a protected class threatens the rights and privileges for all and “menaces the institutions and foundations of democracy.” *Id.* at subd. 1(b). The MHRA is liberally construed to accomplish its remedial purpose of securing freedom from discrimination for persons in Minnesota. Minn. Stat. § 363A.04.

The plain language of the MHRA prohibits schools from discriminating against students based on their gender identity. In its section specific to educational institutions, the statute provides that “[i]t is an unfair discriminatory practice to discriminate in any manner in the full utilization of

or benefit from any educational institution, or the services rendered thereby to any person because of . . . gender identity[.]” Minn. Stat. § 363A.13, subd. 1. The MHRA specifically defines “gender identity” to mean “a person’s inherent sense of being a man, woman, both, or neither. A person’s gender identity may or may not correspond to their assigned sex at birth or to their primary or secondary sex characteristics.” Minn. Stat. § 363A.03, subd. 50. To discriminate includes to “segregate or separate.” Minn. Stat. § 363A.03, subd. 13.

An educational institution violates the MHRA by discriminating in any manner in the services or benefits it offers a student because of the student’s gender identity. This includes prohibiting transgender student athletes from participating in extracurricular activities, as such a practice inherently separates and segregates transgender student athletes from other student athletes based solely on their gender identity. Excluding transgender girl athletes from participating in girls’ extracurricular activities, as the Executive Order directs, denies those students the full utilization and benefit of educational institutions in violation of the MHRA. *See, e.g., N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553, 562-65 (Minn. Ct. App. 2020) (holding that school must permit transgender student to use locker room that aligns with the student’s gender identity under the MHRA).

Therefore, based on the plain language of the statute, educational institutions and the MSHSL would violate the MHRA by prohibiting transgender athletes from participating in extracurricular activities according to their gender identity.

Thank you again for your inquiry, and we hope this opinion is helpful to you.

Sincerely,



KEITH ELLISON
Attorney General

Exhibit R

INDEPENDENT SCHOOL DISTRICT 283

SECTION/FILE 536

DATE OF ADOPTION

6/11/18

REVISED: 09/09/2019

TITLE Gender Inclusion

I. PURPOSE

All students of the school district, including transgender and gender diverse students, deserve respectful and inclusive learning environments that value students' gender identity and gender expression. The school district strives to provide programming and facilities where all students feel safe and supported.

II. GENERAL STATEMENT OF POLICY

The school district's staff and systems ensure inclusive access to programming and facilities. In accordance with its procedures, and in consultation with students, parents, and/or guardians, the school district will:

- A. Respect all students' gender identity and gender expression.
- B. Identify and address students by their preferred names and pronouns
- C. Within academic programing, prohibit the separation of students and/or curricular materials based upon gender unless it serves as a legitimate pedagogical tool.
- D. Provide all students the opportunity to participate in co-curricular and extracurricular activities in a manner consistent with their gender identity, including but not limited to intramural and interscholastic athletics, and in conformance with Minnesota State High School League rules and regulations, where applicable.
- E. Provide all students with access to facilities that align with students' gender identity.
- F. Respect the safety and privacy of all students, pursuant to district policy 515 (Protection & Privacy of Pupil Records) and state and federal privacy laws.
- G. Ensure that all district policies, including but not limited to policies 102 Equal Education Opportunity, 413 Harassment and Violence, 423 Employee-Student Relationships, 425 Staff Development, 514 Bullying Prohibition, 515 Protection & Privacy of Pupil Records, 522 Student Sex Nondiscrimination, 526 Hazing Prohibition, 528 Student, Parental, Family & Marital Status Nondiscrimination and 610 Field Trips apply to all students, regardless of their gender identity or gender expression.

III. TERMINOLOGY

- A. "Gender" refers to the socially constructed roles, activities, behaviors and attributes that a given society attaches to femininity or masculinity.
- B. "Gender Expression" means the manner in which persons represent or express gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.
- C. "Gender Identity" means a person's deeply held sense or knowledge of one's own gender, regardless of the sex assigned at birth.
- D. "Gender Non-Binary" is an umbrella term for people who transcend commonly held concepts of gender through their own expressions and identities. Other terms for this include gender diverse, gender expansive, gender creative, gender nonconforming or genderqueer. Some non-binary people also identify as transgender.
- E. "Transgender" is an umbrella term describing persons whose gender identity or expression is

different from that traditionally associated with the sex at birth.

IV. Reporting Procedures

- A. Any person who believes there has been a violation of this policy shall report the alleged violation immediately to an appropriate school district official designated by this policy.
- B. The school district encourages the reporting party or complainant to use the report form available from the principal or building supervisor of each building or available in the school district office, but oral reports shall be considered complaints as well.
- C. The building principal, the principal's designee, or the building supervisor (hereinafter the "building report taker") is the person responsible for receiving reports of a violation of this policy at the building level. Any person may report a violation directly to a school district human rights officer or the superintendent. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant.
- D. The building report taker shall ensure that this policy and its procedures, practices, consequences and sanctions are fairly and fully implemented and shall serve as the primary contact on policy and procedural matters. The building report taker or a third party designated by the school district shall be responsible for the investigation.

- E. A teacher, school administrator, volunteer, contractor, or other school employee shall be particularly alert to possible situations, circumstances, or events that might be a violation of this policy.
- F. Reports of a violation of this policy are classified as private educational and/or personnel data and/or confidential investigative data and will not be disclosed except as permitted by law. The building report taker, in conjunction with the responsible authority, shall be responsible for keeping and regulating access to any report of a policy violation and the record of any resulting investigation.
- G. Submission of a good faith complaint or report of a policy violation or other prohibited conduct will not affect the complainant's or reporter's future employment, grades, or work assignments, or educational or work environment.
- H. The school district will respect the privacy of the complainant(s), the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the school district's obligation to investigate, take appropriate action, and comply with any legal disclosure obligations.

V. Annual Review

The School Board will review this policy annually until June 2021.

VI. Professional Development

The Superintendent will provide annual professional development to ensure that staff understands its responsibilities pursuant to this policy.

LEGAL REFERENCES:

Minn. Stat. ch. 363A (Minnesota Human Rights Act)
Minn. Stat. § 121A.031 (Safe and Supportive Minnesota Schools Act)
Minn. Stat. § 121A.03, subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)
20 U.S.C. § 1701 et seq. (Equal Educational Opportunities)

CROSS REFERENCES:

St. Louis Park School District Policy 102	– Equal Education Opportunity
St. Louis Park School District Policy 413	– Harassment and Violence
St. Louis Park School District Policy 423	– Employee -Student Relationships
St. Louis Park School District Policy 425	– Staff Development
St. Louis Park School District Policy 514	– Bullying Prohibition
St. Louis Park School District Policy 515	– Protection & Privacy of Pupil Records
St. Louis Park School District Policy 522	– Student Sex Nondiscrimination
St. Louis Park School District Policy 526	– Hazing Prohibition
St. Louis Park School District Policy 528	– Student Parental, Family and Marital Status Nondiscrimination
St. Louis Park School District Policy 610	– Field Trips