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Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Portland Division

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| PARENTS FOR PRIVACY; KRIS GOLLY and JON GOLLY, individually [and as guardians ad litem for A.G.]; LINDSAY GOLLY; NICOLE LILLIE; MELISSA GREGORY, individually and as guardian ad litem for T.F.; and PARENTS RIGHTS IN EDUCATION, an Oregon nonprofit corporation,<br><br>Plaintiffs,<br><br>v. | Case No.<br><br>COMPLAINT<br><br>5 U.S.C. § 500 *et seq* (APA)<br>42 USC § 1983 (Privacy, Religion)<br>20 U.S.C. § 1681 *et seq* (Title IX)<br>42 USC § 2000bb, *et seq* (RFRA)<br>ORS 659A.400 et seq (civil rights)<br>ORS 659.850 et seq (discrimination in education)<br>Jury Trial Requested |

DALLAS SCHOOL DISTRICT NO. 2; OREGON DEPARTMENT OF EDUCATION; GOVERNOR KATE BROWN, in her official capacity as the Superintendent of Public Instruction; and UNITED STATES DEPARTMENT OF EDUCATION; BETSY DEVOS, in her official capacity as United States Secretary of Education as successor to JOHN B. KING, JR.; UNITED STATES DEPARTMENT OF JUSTICE; JEFF SESSIONS, in his official capacity as United States Attorney General, as successor to LORETTA F. LYNCH,

Defendants.

**COMPLAINT FOR DAMAGES & DECLARATORY & INJUNCTIVE RELIEF**

Plaintiffs PARENTS FOR PRIVACY and PARENTS RIGHTS IN EDUCATION, along with other plaintiffs named and identified by name or their initials in the caption above (the "Plaintiffs"), allege:

1. This case is about protecting the privacy of every student within Dallas School District No. 2 ("Dallas School District" or "DISTRICT" or "District Defendant")—privacy that Defendants violate each school day through new rules and policies that radically changed the meaning of "sex" in Title IX. Defendants have unilaterally rejected the Title IX meaning of sex, which for 40 years has meant biologically male and female, two objectively determined, fixed, binary sexes rooted in our human reproductive nature. In lieu of this unambiguous meaning of sex, Defendants inject a distinct and altogether different concept of gender identity which is subjectively discerned, fluid, and nonbinary. The Department of Education and Department of Justice (collectively "Federal Defendants") acted without regard for

statutory authority or required rule-making procedures, and created and promulgated a new *ultra vires* rule ("Federal Rule" or "Rule") through the artifice of issuing "guidelines" ("Federal Guidelines" or "Guidelines") and then enforcing those guidelines against several schools. Those enforcement actions put all school districts nationwide on notice that they must treat a student's gender identity as their sex for the purpose of Title IX if they wish to retain federal funding. The Federal Rule redefines "sex" in Title IX and requires school districts to regulate access to sex-specific private facilities such as locker rooms, restrooms, shower rooms, and hotel rooms on overnight school-sponsored trips by gender identity rather than by sex. DALLAS SCHOOL DISTRICT ("District") fully adopted and implemented the Federal Defendant's Rule as their own district policy in the form of a Student Safety Plan. The consequence of the Federal Rule and the District policy is unavoidable: adolescent students, in the midst of disrobing within private intimate spaces, will encounter an adolescent student of the opposite sex in their midst. The risk of such encounters, and the encounters themselves, merit prompt judicial intervention to enjoin Federal Defendants' rules and guidelines as well as DISTRICT's Student Safety Plan and policies and protect Plaintiffs' bodily privacy.

## JURISDICTION AND VENUE

2. This action arises under 42 U.S.C. §§ 1983 *et seq.* (the "Civil Rights Act"), 5 U.S.C. §§ 500 *et seq.* (the "Administrative Procedure Act" or the "APA"), 20 U.S.C. §§ 1681 *et seq.* ("Title IX"), the Religious Freedom Restoration Act ("RFRA"), 42 USC

§§ 2000bb *et seq.*, and the First and Fourteenth Amendments to the United States Constitution.

3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1361, and 1367.

4. The Court has jurisdiction to issue the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and FRCP 57.

5. The Court has jurisdiction to award the requested injunctive relief under 5 U.S.C. §§ 702 and 703, 20 U.S.C. § 1683, 42 U.S.C. § 20000bb-1(c), 28 U.S.C. § 1343(a)(3), 775 Ill. Comp. Stat. Ann. § 35/20, and FRCP 65.

6. The Court has jurisdiction to award nominal and compensatory damages under 28 U.S.C. § 1343(a)(4).

7. The Court has jurisdiction to award reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

8. Venue lies in this district pursuant to 28 U.S.C. § 1391(b) and (e), because a substantial part of the events or omissions giving rise to all claims occurred in this district where one or more defendants are located.

**PARTIES: PLAINTIFFS**

9. All plaintiffs are citizens of the United States and residents of Polk County, Oregon; except that plaintiff PARENTS RIGHTS IN EDUCATION has its primary office in Washington County, Oregon.

10. Plaintiff PARENTS RIGHTS IN EDUCATION is a nonprofit organization comprised of educators, school board members, parents and

grandparents whose mission is to protect and advocate for parents' rights to guide the education of their children, including but not limited to addressing "health services" and sexually explicit content and materials given or promoted to students through educational services under the guise of comprehensive sexuality education.

11. Plaintiff PARENTS FOR PRIVACY is a voluntary unincorporated association of current and former students, as well as their parents and other concerned members of the District community who are directly impacted by the USDOE's adoption and enforcement of the legislative rule redefining the term "sex" in Title IX to include "gender identity" and implementation of the Student Safety Plan (Ex. A) and its underlying policies which are identified in ¶ 28 below.

12. Student Plaintiffs object to being required to share restrooms, locker rooms and shower rooms with students of the opposite biological sex.

13. One or more female students has attended Dallas High School, and has been subject to both the Student Safety Plan and underlying polices (Ex. A).

14. In addition, there are boy plaintiffs who attend Dallas High School and other District schools, and so are currently subject to the Student Safety Plan.

15. Each plaintiff who is individually identified by his/her initials is also a member of one of the subgroups listed below. For clarity, when used below: "Student Plaintiffs" refers to all students who were, are or will be subject to the Student Safety Plan; "Parent Plaintiffs" refers to all parents who are part of PARENTS FOR PRIVACY (including those who are individually identified by initials); "Girl Plaintiffs" refers to all female students who attend or have attended Dallas High

School who are subject to the Student Safety Plan; and "Boy Plaintiffs" refers to all male students who attend DALLAS HIGH SCHOOL or other DISTRICT schools who are subject to the Student Safety Plan.

16. Plaintiff LINDSAY GOLLY, recently attended DALLAS HIGH SCHOOL and was subject to Student Safety Plan during the 2015-2016 school year. Plaintiffs KRIS GOLLY and JON GOLLY are her parents, as well as the parents and petitioning guardians ad litem for their son A.G., currently an eighth grade student in the Dallas School District who is or soon will be subjected to the Student Safety Plan.

17. Plaintiff MELISSA GREGORY is the parent and petitioning guardian ad litem for T.F., currently an eleventh grade student at Dallas High School who is subject to the Student Safety Plan.

18. The factual statements and allegations of law below apply as alleged to a number of individual plaintiffs.

**PARTIES: DEFENDANTS**

***Defendant Dallas School District No. 2***

19. DALLAS SCHOOL DISTRICT NO. 2 ("DISTRICT") is a public school district located in Dallas, Polk County, Oregon organized under the laws of the State of Oregon, and it is a government entity capable of suing and being sued in all courts, including this court. All of DISTRICT's actions complained of herein were conducted under color and pretense of law, including the enactment and enforcement of policies pursuant to Oregon and United States law.

20. DISTRICT is comprised of public educational institutions that provide K-12 education to both male and female students within the meaning of ORS 659A.850. DISTRICT is an employer within the meaning of ORS 659A.001 and 659A.106, as well as a place of public accommodation within the meaning of ORS 659A.400, *et seq*.

21. The public schools that comprise DISTRICT receive federal funds and are thereby subject to the requirements of Title IX.

22. Defendant DISTRICT is charged with the formulation, adoption, implementation, and enforcement of its policies for its schools as alleged in ¶¶ 74 through 94, including the following policies challenged herein:

a. The Student Safety Plan, together with the underlying policies identified in subparagraphs b-g below, was enacted and implemented at DALLAS HIGH SCHOOL by DISTRICT on or about November 15, 2015 (Ex. A);

b. Policy AC (entitled Nondiscrimination) prohibiting discrimination and harassment in educational opportunities and services offered students on certain protected grounds, including sex and religion (Ex. B);

c. Policy AD (entitled Philosophy of Education) reciting in relevant part that "The primary purpose of the Dallas School District is to provide opportunities for the full intellectual development of each child", a "shared responsibility with parents/legal guardians [and

others]...for the social, physical and emotional growth and development of the individual child" and "a shared responsibility for developing in all children an awareness of the societal responsibilities to themselves, other individuals and to the local community or to the larger community of state, nation, or world" (Ex. C);

d. Policy JBA/GBN (entitled Sexual Harassment) defines "sexual harassment" to include "conduct or communication [that] is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with a student's educational performance...; or creates an intimidating, offensive or hostile educational or working environment" (Ex. D);

e. Policy JBA/GBN-AR (entitled Sexual Harassment and Sexual Violence) further provides "sexual harassment" includes "...9. Other sexually motivated behavior which may affect working conditions, or the educational process" (Ex. E);

f. Policy JF/JFA (entitled Student Rights and Responsibilities) whereby the Board acknowledges responsibility to afford students "civil rights – including the rights to equal educational opportunity... and 5. The right to privacy..." (Ex. F);

g. Policy JFCF (entitled Harassment/Intimidation/ Cyberbullying/Teen Dating Violence/Domestic Violence-Student),

> whereby the Board acknowledges in its "its commitment to providing a positive and productive learning environment will consult with parents/guardians, ...students...in developing this policy", and again defining "Harassment, intimidation or bullying" to mean "any act that substantially interferes with a student's educational benefits, opportunities or performance...having the effect of knowingly placing a student in reasonable fear of physical harm...[or] creating a hostile educational environment, including interfering with the psychological well-being of the student." (Ex. G)

23. Defendant DISTRICT is responsible for the enforcement of its policies by its board of directors, Superintendent, administrators, teachers, and all other district personnel.

***Defendant Oregon Department of Education***

24. Defendant OREGON DEPARTMENT OF EDUCATION ("ODE") is an executive agency of the state of Oregon and is responsible for the administration and funding of K-12 public education in the state of Oregon, as well as the enforcement of Title IX, 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106 for schools under its jurisdiction. On or about May 5, 2016 ODE issued its "Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students", official policy based in part on legal advice given in

documents issued by USDOE and USDOJ. (Ex. M-1). ODE has not changed its policies in light of subsequent actions by federal officials recited in ¶ 39 below.

### *Defendant Governor Kate Brown*

25. Governor KATE BROWN is the Superintendent of Public Instruction and the highest ranking executive official at OREGON DEPARTMENT OF EDUCATION. In this capacity, she is the final policymaker responsible for the operation and management of the ODE, including the issuance of Exhibit M-1. She is sued in her official capacity only.

### *Defendant United States Department of Education*

26. Defendant United States Department of Education ("USDOE") is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of Title IX, 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106.

27. The USDOE, through its Office for Civil Rights ("OCR"), has exercised its alleged authority to promulgate, administer and enforce its new legislative rule for Title IX, as alleged in ¶¶s 49 to 73, to the detriment of Student Plaintiffs and their respective parents.

### *Defendant Secretary Betsy DeVos*

28. JOHN B. KING, JR. ("KING"), was the United States Secretary of Education at all times material to the enactment of the Rule and Guidelines. In this capacity, he was the final policymaker responsible for the operation and management of the USDOE. Defendant BETSY DEVOS subsequently became the Secretary of

Education in early 2017 and is currently the final policymaker for the operation and management of the USDOE. DEVOS is sued in her official capacity only.

***Defendant United States Department of Justice***

29. Defendant United States Department of Justice ("USDOJ") is an executive agency of the United States government and is responsible for the enforcement of Title IX, 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106. Pursuant to Executive Order 12250, the DOJ has authority to bring enforcement actions to enforce Title IX.

***Defendant Attorney General Jeff Sessions***

30. LORETTA E. LYNCH ("LYNCH") was the United States Attorney General at all times material to the enactment of the Rule and Guidelines. In this capacity, she was the final policymaker responsible for the operation and management of the USDOJ, including the enforcement of Title IX, 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106. Subsequently, Defendant JEFF SESSIONS became the Attorney General in early 2017 and is currently the final policymaker for the operation and management of the USDOJ. SESSIONS is sued in his official capacity only.

**FACTUAL BACKGROUND**

31. Plaintiffs believe no student can or should be forced to use private facilities at school, like locker rooms, showers and restrooms, with students of the opposite sex. Plaintiffs further believe no government agency can legitimately hold hostage education funding to advance an unlawful agenda enacted unlawfully, and

no school district should trade its students' constitutional and statutory rights for dollars and cents from the U.S. Government. This is especially true when it means abandoning a common-sense practice that has long protected every student's privacy and access to education.

32. Bypassing congressional intent, judicial rulings, and more than 40 years of Title IX history enforcing the unambiguous term "sex" (meaning males and females), the Federal Defendants decreed by unlawful agency fiat a new legislative rule redefining "sex" in Title IX and its implementing regulations to include "gender identity", thereby requiring that a school must treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations.[1] The

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[1] The term "**sex**," as used in both Title IX and this Complaint, is a binary concept that refers to one's biological status as either male or female determined at birth and manifest by biological indicators such as chromosomes, gonads, hormones, and genitalia. *See, e.g.*, Am. Psychological Ass'n, *Answers to Your Questions About Transgender People, Gender Identity and Gender Expression* 1, http://www.apa.org/topics/lgbt/transgender.pdf ("*Sex* is assigned at birth, refers to one's biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy."); Am. Psychological Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 451 (5th ed. 2013) ("DSM-5") (noting that sex "refer[s] to the biological indicators of male and female (understood in the context of reproductive capacity), such as in sex chromosomes, gonads, sex hormones, and nonambiguous internal and external genitalia."). When "male" and "female" are used in this Complaint, they are used consistently with this definition. "**Gender identity**" as defined by the Department of Education "refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth." U.S. Department of Justice and U.S. Department of Education, *Dear Colleague Letter: Transgender Students* 1 (May 13, 2016). **Exhibit K**. It is also subjective, fluid, and not rooted in human reproduction or tied to birth sex. Lawrence S. Mayer & Paul R. McHugh, *Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences*, New

Federal Defendants' new Rule is succinctly stated this way: a school must "treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations." May 13, 2016 Dear Colleague Letter: Transgender Students (Ex. K).

33. Federal Defendants created and promulgated this new legislative rule ("Rule") through a series of Federal Guidelines that were sent to school districts between April 2014 and May 2016, including:

- U.S. Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence,* 5 (Apr. 2014) (Ex. H)
- U.S. Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities,* 25 (Dec. 2014) (Ex. I)
- U.S. Department of Education, Office for Civil Rights, *Title IX Resource Guide,* 1, 15, 16, 19, 21-22 (Apr. 2015) (Ex. J) and
- *Dear Colleague Letter on Transgender Students* (Ex. K).

34. Contemporaneously, Federal Defendants enforced the policies announced in these Guidelines as "a condition of receiving Federal funds", publicly threatening to remove all federal funding from school districts that did not submit to their Guidelines. (Ex. K).

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Atlantis, at 87-93 (2016). When "gender identity" is used in this Complaint, it is used consistently with this definition.

35. The Rule made two radical changes to the law that are directly at issue in this case: It (1) redefined the term "sex" in Title IX to include gender identity, and (2) prohibited school districts from providing sex-specific facilities including locker rooms, shower rooms, restrooms, and hotel rooms on school sponsored trips.

36. Under the Rule, school districts must provide any male student who professes a female gender identity unrestricted use of girls' private facilities and any female student who professes a male gender identity unrestricted use of boys' private facilities.

37. The Rule is *ultra vires* because it violates both substantive and procedural requirements of the Administrative Procedure Act ("APA") in that it was considered or adopted through notice and comment rulemaking and was not approved or promulgated by the President of the United States.

38. The Rule is unlawful because it mandates a school policy that creates a sexually harassing hostile environment and violates privacy.

39. Subsequently, on or about February 22, 2017, USDOE and USDOJ issued a letter withdrawing the guidance in their May 13, 2016 Dear Colleague Letter (Ex. K) and an April 2015 Letter "in order to further and more completely consider the legal issues involved." Additionally, on or about March 3, 2017 the U.S. District Court for the Northern District of Texas dismissed without prejudice the multi-state lawsuit challenging the Rule and dissolving its preliminary injunction. Finally, on or about March 6, 2017 the United States Supreme Court stayed and ultimately remanded *Gloucester County School Board v. G.G.*, 2016 WL 1567467, ___ F3d ___

(4th Cir. 2016). for further consideration. *Gloucester County School Board v. G.G*, 132 S.Ct. 2442 (2016). More recently, USDOE's Office of Civil Rights has instructed its field offices to continue investigation and potential enforcement of claims from transgender students on a case-by-case basis. Ex. N. Notwithstanding the foregoing, the Rule has not been formally repealed, and it has continuing legal force and effect binding DISTRICT.

40. In response to the foregoing Federal Guidelines and enforcement, the DISTRICT stopped its historic and lawful practice of sex-separating locker rooms and restrooms and adopted and implemented the DISTRICT Student Safety Plan. Ex. A. Despite the actions recited in ¶ 39 above, DISTRICT has not changed its policies or the Student Safety Plan complained of herein.

41. The Student Safety Plan regulates all DISTRICT schools, programs, and students aged pre-school through 12th grade, including the Student Plaintiffs.

42. Because of the Student Safety Plan, Student A currently uses both the boys' locker rooms and the boys' restrooms at DALLAS HIGH SCHOOL, which creates an intimidating and hostile environment for male students attending there, some of whom are as young as 14, because Student A—who is biologically a female but professing a male gender identity—regularly uses their private facilities at the same times as Boy Plaintiffs.

43. As a direct result of Defendants' policies and actions, every day biologically male and female students go to school, where they have experienced, or may experience, embarrassment, humiliation, anxiety, fear, apprehension, stress,

degradation, and loss of dignity because they will have to use locker rooms, showers and restrooms with a student of the opposite biological sex.

44. Because of Defendants' policies and actions, these students are afraid of being seen by, and being forced to share intimate spaces with a student of the opposite biological sex while they are in various stages of undress.

45. Because of Defendants' policies and actions, these students are afraid they will have to see other students of the opposite biological sex in a state of undress.

46. Because of Defendants' policies and actions, male and female students are afraid of having to attend to their most personal needs, especially during a time when their body is often undergoing what they and other students may regard as embarrassing changes as they transition from childhood to adulthood, in a locker room, shower or restroom with a student of the opposite biological sex present. Additionally, no provision has been made in the Student Safety Plan or otherwise for appropriate disposal of Student A's feminine hygiene products in facilities previously reserved for male students, thereby creating sanitation and health concerns.

47. The Student Safety Plan has had and continue to have a profoundly negative effect on the students' access to educational opportunities, benefits, programs, and activities at their schools in one or more of the following particulars:

a. Some students actively avoid using the locker rooms, restrooms and showers at school;

b. One or more students have dropped physical education classes to avoid having to encounter other students of the opposite biological

sex in the locker room, as documented in the minutes of the December 14, 2015 school board meeting;

c. Other students change as quickly as possible in the locker room, avoiding all eye contact and conversation, all the while experiencing great stress and anxiety over whether a student of the opposite biological sex will walk in while they are undressing or changing; and

d. Some students avoid the restroom altogether, and others wait as long as possible to use the restroom, so they won't have to share it with a student of the opposite biological sex, thus potentially risking a variety of health problems.

48. These negative effects on the students' access to educational opportunities, benefits, programs, and activities at their school are a direct result of USDOE's adoption and enforcement of the Rule redefining the term "sex" in Title IX to include "gender identity", which in turn forms the justification for the Student Safety Plan.

49. USDOE's action violates the Administrative Procedure Act, and the Student Safety Plan violates the student plaintiffs' right to privacy, discriminates on the basis of sex under Title IX by creating a hostile environment, and violates additional constitutional and statutory rights of Student Plaintiffs, for which they seek relief from this Court. Additionally, the aforementioned violations violate Parent Plaintiffs' rights as parents to exercise their constitutional right to direct the

upbringing and education of their children, for which they too seek relief from this Court.

***Federal Defendants' Unlawful Title IX Policy***

50. Congress passed Title IX of the Education Amendments of the Civil Rights Act in 1972 pursuant to its Spending Clause power to prohibit invidious sex discrimination. Title IX states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...." 20 U.S.C. § 1681.

51. Title IX was designed to "expand basic civil rights and labor laws to prohibit the discrimination against women which has been so thoroughly documented." 118 Cong. Rec. 3806 (1972) (Statement of Senator Birch Bayh of Indiana).

52. Congress delegated authority to federal agencies to "effectuate the provisions of section 1681 of this title...by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute..." but specified that "no such rule, regulation, or order shall become effective unless and until approved by the President." 20 U.S.C. § 1682.

53. Regulations implementing Title IX in relevant part provide that "no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular...or other education program or activity operated by a recipient which receives Federal

financial assistance," and that no funding recipient shall on the basis of sex "treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; ... Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; ... Deny any person any such aid, benefit, or service; ... Subject any person to separate or different rules of behavior, sanctions, or other treatment; ...[or] Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity." 34 C.F.R. § 106.31.

54. Title IX does not authorize Federal Defendants to regulate the content of speech or discriminate on the basis of viewpoint, which is presumptively unconstitutional under the First Amendment to the United States Constitution.

55. Title IX and its implementing regulations use the term "sex" to categorize the persons protected from invidious discrimination by the law.

56. The term "sex" in Title IX and its implementing regulations means the immutable, genetic, reproductively-based binary male-female taxonomy. *See* p. 12, fn. 1. The text of Title IX demonstrates this male-female taxonomy by using terminology such as "both sexes," "one sex," and "the other sex."

57. Title IX and its implementing regulations do not use the term "gender identity," or alternate terms referring to the same concept (*e.g.*, "transgender," or "transsexual"). Nothing in the text, structure, or legislative history of Title IX suggests or supports that the term "sex" in Title IX includes "gender identity." Nothing in the text, structure, and drafting history of Title IX's implementing

regulations suggests or supports that the term "sex" in these regulations includes "gender identity."

58. Although Senator Al Franken of Minnesota began in 2011 introducing legislation modeled after Title IX to prohibit gender identity discrimination in schools, Congress has repeatedly failed to enact the legislation.

59. Title IX and its implementing regulations expressly permit sex-specific private facilities, providing in relevant part: "nothing contained herein shall be construed to prohibit any educational institution…from maintaining separate living facilities for the different sexes…." 20 U.S.C. § 1686.

60. The implementing regulations confirm that living facilities include restrooms, locker rooms, and shower rooms – "[school districts] may provide separate toilet, locker room, and shower facilities on the basis of sex, [as long as] such facilities provided for students of one sex [are] comparable to such facilities provided for students of the other sex." 34 C.F.R. § 106.33.

61. Federal Defendants have provided no explanation for the new Rule, including its basis for the decision to promulgate the Rule, a description of the factors relied upon to formulate the Rule, its recognition of the fundamentally different nature of sex and gender identity, or any recognition or explanation for the reversal of long-standing policy that permitted districts to separate private facilities by sex without regard to a student's professed gender identity.

62. Federal Defendants also failed to substantively assess how the new Rule would impact privacy rights of all male and female students on a given campus, including District schools.

63. Federal Defendants have enforced the Rule through public investigations, findings, and threats to revoke millions of dollars in federal funding from several school districts because they provided sex-specific private facilities. U.S. Department of Education, *Resources for Transgender and Gender Nonconforming Students: OCR Resolutions*. http://www2.ed.gov/about/offices/list/ocr/lgbt.html (last visited August 10, 2016). Federal Defendants have no statutory authority to investigate a claim based on gender identity or gender nonconformity.

64. Township High School District 211 ("District 211") in Palatine, Illinois was one of the districts investigated.

65. The Office of Civil Rights for the DOE ("OCR") issued a Letter of Findings against District 211 in November 2015. Township High School District 211, 05-14-1055 (Office of Civil Rights November 2, 2015) (letter of findings). (Ex. L). That letter stated in relevant part that when OCR investigates Title IX complaints it looks for evidence of "discrimination based on sex, gender identity, or gender nonconformity." *Id.*

66. The letter also stated that District 211 violated Title IX by discriminating on the basis of gender identity because District 211 did not let a male student who professes a female gender identity use girls' locker rooms. OCR then

threatened to revoke $6 million in federal funding from District 211 if it continued to sex-separate private facilities.

67. In December 2015, District 211 signed an Agreement with OCR and granted the male student access to the girls' locker rooms. (Ex. M).

68. Parents and students who suffered privacy and constitutional harm filed a federal lawsuit regarding that Agreement. *Students and Parents for Privacy v. Dep't of Educ., et al.*, No. 1:16-cv-04945 (N.D. Ill. filed May 4, 2016).

69. Similarly, in May 2016, Defendant USDOJ sent letters to the North Carolina Governor and the University of North Carolina system threatening to revoke Title IX funding from North Carolina schools if the state and University System enforced a state law that mandates sex-specific private facilities in government buildings, including schools.

70. When the Governor resisted, Defendant USDOJ filed a federal lawsuit against the State of North Carolina. *U.S. v. N.C.*, No. 1:16-cv-00425 (M.D. N.C. filed May 9, 2016).

71. These enforcement actions, with the Guidelines, sent a clear message to school districts nationwide, including Dallas School District, that they too could lose millions in federal funding for maintaining sex-specific private facilities, specifically authorized pursuant to Title IX.

72. Despite the subsequent actions taken by USDOE, USDOJ and federal courts (*See* ¶ 39), DISTRICT continues to implement its Student Safety Plan in derogation of the rights of Plaintiffs and others.

73. Because the Rule has not been repealed (*See* ¶ 39), DISTRICT still faces potential legal liability from OCR and others on the basis of "gender identity", allegedly in violation of Title IX, by refusing a biological female, who perceives herself to be male, access to the boys' locker and shower rooms.

74. Per the Dallas School District No. 2 Adopted Operating Budget 2015-2016, DISTRICT has faced and potentially continues to face the threat of losing over $2 million dollars in federal funds for each school year from 2015-2016 to the present if it fails to grant a biologically female student access to the boys' restroom, locker room and shower rooms.

### *Dallas School District's Unconstitutional Policy*

*75.* In response to the threat of OCR enforcement action, on or about November 15, 2015, DISTRICT developed and implemented the Student Safety Plan **(Ex. A)** granting Student A the right to enter and use all boy's locker rooms, restrooms and showers at DISTRICT schools according to her perceived gender identity. DISTRICT has publicly defended the Student Safety Plan based on USDOE's unlawful action described above. Despite the actions recited in ¶ 39 above, DISTRICT has not changed its policies.

76. Student A is currently a 12th grade student at Dallas High School.

77. Student A was born a girl and is anatomically female. Throughout most of her school career, Student A identified to her classmates, including Student Plaintiffs, as a girl, consistent with her biological sex, and used the restrooms, locker

rooms and showers consistent with her biological sex prior to and including her high school career until September 2015.

78. In September 2015, Student A decided to publicly identify herself as male, although prior to that time she had been using the girls' facilities in middle school and high school. Student A requested that she be allowed to use the boys' locker rooms and shower facilities, but was unsure which restroom facilities she preferred.

79. DISTRICT provided Student A with her choice of private facilities to change her clothes for physical education from the fall of 2015 through the end of the school year in June, 2016. DISTRICT told Student A that she could use the boys' locker rooms and shower facilities while biologically male students are present, even though her presence would invade the privacy of those male students, and even though her parent and legal guardian objected. DISTRICT further permitted Student A to "use any of the bathrooms in the building to which he identifies sexually." A true copy of the floor plan of DALLAS HIGH SCHOOL is attached hereto as Ex. O. DISTRICT elected not to accommodate Student A by granting her access to separate existing unisex restroom, locker room and shower facilities accessible through the main office as alleged herein, and Because of the Student Safety Plan (Ex. A), Student A is currently using the boys' locker rooms, showers and restrooms at Dallas High School while male students are present, including some of the Boy Plaintiffs and other biologically male students.

80. The Student Safety Plan described above was shared with other students in Student A's PE class, but was not otherwise disclosed or discussed with DISTRICT students or parents of DISTRICT students.

81. In response to Student A's complaints for accommodation, DISTRICT is preparing to make changes to its locker room, shower and restroom facilities for the use of Student A and others at a cost variously estimated at $200,000-$500,000. Even if such changes are made, DISTRICT will still allow all persons to utilize the facilities of their choice without accommodating those who still desire segregated facilities.

82. Under DISTRICT's previous discrimination policy biological females were not expressly authorized to enter male locker rooms or other facilities. However, Student A has utilized the boys' locker room and shower facilities on numerous occasions from November 15, 2015 to the present and has changed clothes while male students were present.

83. Similarly, even using toilets in stalls does not resolve the embarrassment, humiliation, anxiety, intimidation, fear, apprehension, and stress produced by using the restroom with students of the opposite sex, because the stalls are not fully private; and, besides, the Student Plaintiffs are still attending to private bodily needs in the immediate presence of the opposite sex. In both the boys' and girls' restrooms, there are large gaps above and below the stall doors, and gaps along the sides of the door, that another student could see through even inadvertently. These gaps mean that the Student Plaintiffs, both boys and girls, must risk exposing themselves to the opposite sex every time they use the restroom. DISTRICT cannot

assure Student Plaintiffs' that their partially unclothed bodies will not be exposed to members of the opposite biological sex while using the restroom.

84. As a consequence, some Plaintiffs and other students are using the restroom as little as possible while at school so they will not have to risk using the restroom with a student of the opposite biological sex present. This may increase their risk for various health conditions, like bladder infections.

85. Some students risk tardiness by hurrying to distant facilities of the school, during short 5-minute passing periods, to try and find a restroom not likely to be used by a student of the opposite biological sex.

86. The stress and anxiety some students feel over having to use the restroom with biologically opposite-sex students is an ever-present distraction throughout the school day, including during class instruction time.

87. The DALLAS HIGH SCHOOL Principal has told students that all restroom facilities may be utilized by any student regardless of their biological sex and may not object to students of the opposite sex utilizing the same facilities, which is not acceptable to Parent Plaintiffs for multiple reasons set forth in the following paragraphs:

88. Depending on the classes a student has, this can mean that they travel significant distances from one class to another in a limited passing period.

89. Restrooms are often a significant distance apart, so a student's choice to find another restroom may mean there is not enough time to find another restroom,

attend to their personal needs, and still arrive to class on time. Tardiness may result in detention or other sanctions.

90. The suggested solution is even more unworkable if there are lines in the restrooms, or if there is an urgent or immediate need to use the restroom.

91. DISTRICT's response to Parent Plaintiffs makes the restroom environment hostile to Student Plaintiffs since each time they use the restroom they must do so knowing that a student of the opposite biological sex can walk in on them. In the same way, in response to the request for a private locker room facility, the DALLAS HIGH SCHOOL Principal told Parent Plaintiffs that their students could use the unisex staff lounge, which has no functioning shower. None of these is an acceptable alternative.

92. Students at DALLAS HIGH SCHOOL have expressed their discomfort with the accommodations provided for Student A and attempted to circulate a petition objecting to such accommodations. However, Principal Steve Spencer confiscated the petitions being circulated and ordered students circulating them to discontinue doing so or face disciplinary action.

93. At Board meetings on December 14, 2015, January 19, 2016 and February 11, 2016, despite public opposition from Plaintiffs and many other parents and students, DISTRICT defended its policies and practices indefinitely granting Student A right of entry to and use of any and all boys' locker rooms, shower rooms and restrooms in DALLAS HIGH SCHOOL. DISTRICT represents speakers at these

meetings as experts on gender identity issues, all of whom have exclusively supported the Student Safety Plan and condemned any objections to these policies.

94. Based on DISTRICT's public defense of these policies, Plaintiffs further believe that Student A will similarly be allowed access to other DISTRICT facilities of her choice throughout the DISTRICT when attending school or other programs at such other DISTRICT facilities.

95. In addition to Student A, plaintiffs understand on information and belief there are one or more other students attending DISTRICT schools who self-identify as transgender or "gender fluid."[2]

96. In February, 2017 the staff at DISTRICT's La Creole Middle School administered a "Needs Assessment" to students at La Creole on their school-issued Chrome Book computers without prior notice, knowledge or consent of parents or guardians. Ex. P. Among the students required to take the Needs Assessment was A.G. The Needs Assessment asked students to disclose confidential information about various problems or issues they were experiencing the students might want assistance with, including clothing, school supplies, family food sufficiency, alcohol or drug abuse, suicide, self-image, sexual orientation and gender identity, unhealthy

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2 "Gender fluidity" is generally defined to mean that one's gender identity can change day-to-day, or even moment-to-moment, and is not limited to the two binary genders (i.e., to "male" or "female"). So, for example, one may identify as female one moment, as male the next, and as neutrois (a neutral gender that is neither male nor female) the next. *See, e.g.*, *Gender Diversity*, "Gender Fluidity," *available at* http://www.genderdiversity.org/resources/terminology/*Nonbinary.org*,"Genderfluid," *available at* http://nonbinary.org/wiki/Genderfluid (both websites last visited May 3, 2016).

relationships and other subjects of a personal or family nature. After some parents learned of the survey and objected, school officials said participation in the survey was voluntary, whereas A.G. and other students understood their participation was required.

### *Damaging Effects of District's Actions on Students at Dallas High School*

***Boy Plaintiffs***

97. A number of biologically male students, including Boy Plaintiffs, had physical education during the same class period as Student A, and were forced to use the PE locker room with her in spite of their objections to doing so.

98. Boy Plaintiffs and other biologically male students cannot escape forced interactions with Student A in the locker room because physical education ("PE") is a mandatory course for two or more years of school in DISTRICT, and is a requirement to graduate. Moreover, it is mandatory that all students in PE class change into clothing appropriate for PE class, and all must change their clothes at the beginning and end of each PE class.

99. The main boys' locker room is a square room with four banks of lockers and wooden benches, plus communal showers along one wall, used by approximately 30 students in physical education classes to change clothes during a given class period. Also within that space are segregated lockers, showers and restroom facilities and coach's office spaces.

***Girl Plaintiffs.***

100. Because of the Student Safety Plan (Ex. A), Girl Plaintiffs and other biologically female students at DALLAS HIGH SCHOOL face living in ongoing anxiety, fear, and apprehension that a biological boy will be permitted to walk in at any time while they are using the school locker rooms or showers and see them in a state of undress or while changing.

101. Because of the Student Safety Plan, Girl Plaintiffs and other biologically female students at DALLAS HIGH SCHOOL live in constant anxiety, fear, and apprehension that a biological boy will be permitted to walk in at any time while they are using the restroom engaged in intimate and private bodily functions.

102. In that event, Girl Plaintiffs cannot escape forced interactions with biologically male students in the locker room because physical education ("PE") is a mandatory course for two or more years of school in DISTRICT, and is a requirement to graduate. Moreover, it is mandatory that all students in PE class change into clothing appropriate for PE class, and all must change their clothes at the beginning and end of each PE class. Some Girl Plaintiffs and other biologically female students also change into sports bras, resulting in even greater bodily exposure while in the locker rooms.

103. The Girls' locker room is constructed similarly to the boys' locker room.

104. Girl Plaintiffs object to being forced to use a locker room, shower or restroom with any biological male student as the Student Safety Plan mandates when a biological male student informs the DISTRICT of his new gender as a female.

105. The dread, anxiety, stress, and fear the Girl Plaintiffs feel over having to use the same locker room, shower or restroom as a biologically male student is a constant distraction during the school day, including during class instruction time.

106. The Girl Plaintiffs and other biologically female students are also anxious, afraid and embarrassed to see any biologically male students in a state of undress or naked because he is a biological male.

107. The Girl Plaintiffs and other female students feel compelled to change their clothing as quickly as possible during PE classes, while trying not to observe other students.

108. Because of the Defendants' actions that allow a biological male into the girls' locker room, Girl Plaintiffs and other female students have come to view the PE locker room as a scary and intimidating environment.

109. Additionally, DISTRICT has, through various announcements to the students at DALLAS HIGH SCHOOL and through board and community meetings on gender identity DISTRICT has organized and sponsored, conveyed to the Student Plaintiffs and parents the message that any objection to the Student Safety Plan (Ex. A) or restriction on Student A's use of opposite sex facilities based on her gender identity will be viewed by DISTRICT administration as intolerance and bigotry.

110. Because of DISTRICT's message that differing views will not be tolerated, most of the Student Plaintiffs have been deterred from asking for a separate, private locker room or restroom.

111. Because of DISTRICT's message, at least some Student Plaintiffs are afraid to be named publicly in this lawsuit, for fear that other students and their schools will retaliate against them.

112. Third, even if Student Plaintiffs could use the facilities without suffering ridicule and harassment, they do not remedy the privacy violation caused by the presence of a person of the opposite biological sex sharing the same small, intimate settings where they are naked or in various states of undress.

***Parent Plaintiffs***

113. DISTRICT's response to Parent Plaintiffs does nothing to alleviate the stress and anxiety of having their student subjected to the presence of a student of the opposite biological sex already using the locker room, shower or restroom.

114. All Parent Plaintiffs also adamantly object to their sons and daughters using locker rooms, showers and restrooms with students of the opposite sex while that student is naked or in a state of undress, nor do they want their children to attend to their private bodily needs in the presence of the opposite biological sex.

115. Some Parents have asked DISTRICT for private options for their students to change their clothes and use the restroom, but the options offered are inadequate and inferior to the facilities provided to Student A. Additionally, options offered are also unworkable in terms of the practical locker room and shower needs of the Student Plaintiffs.

116. The Student Safety Plan (Ex. A) interferes with some Parent Plaintiffs' preferred moral and/or religious teaching of their children concerning modesty and nudity.

117. The Student Safety Plan (Ex. A) further interferes with Parent Plaintiffs' right to control whether their children will be exposed to the opposite sex in intimate, vulnerable settings like restrooms, locker rooms, and showers.

118. The Student Safety Plan (Ex. A) interferes with Parent Plaintiffs' right to control whether their children's partially or fully unclothed body is exposed to the opposite sex.

119. Because of the Student Safety Plan (Ex. A), at least one Parent Plaintiff has decided to send his daughter to private school, instead of a DISTRICT school, when she starts high school.

120. Some student and parent members of PARENTS FOR PRIVACY, including JON & KRIS GOLLY and their children, are devout Christians whose faith requires that they preserve their modesty and not use the restroom, shower, or undress, in the presence of the opposite sex.

121. These students and parents also believe that they should not be in the presence of a member of the opposite sex while that person is using the restroom, showering, or undressing.

122. The Student Safety Plan (Ex. A) is particularly likely to cause emotional and psychological trauma to girls who have been sexually assaulted, for whom the presence of a biological male in their private facilities can be especially unnerving, or

even terrifying. The Centers for Disease Control (the "CDC") has observed that almost 12% of high school girls reported that they had already experienced the horror of rape. Center for Disease Control, *Sexual Violence: Facts at a Glance* (2012); http://www.cdc.gov/violenceprevention/pdf/sv-datasheet-a.pdf. This means that nearly 1 out of every 8 high school girls is likely to have suffered sexual assault, a statistic that compounds the problem with the Student Safety Plan. DISTRICT's policies thereby cause stress, fright, embarrassment, humiliation, and anxiety for the Student Plaintiffs, they are likely more traumatizing to other students who have been sexually assaulted.

## ALLEGATIONS OF LAW

123. All Student Plaintiffs have suffered and continue to suffer the loss of their constitutionally guaranteed right to bodily privacy, as well as their right under Title IX to an education that is free from a hostile environment based on sex, because of the Defendants' policies and actions, including the Student Safety Plan.

124. Additionally, all Student Plaintiffs suffer embarrassment, humiliation, anxiety, intimidation, fear, apprehension, stress, degradation, and loss of dignity as a result of the Defendants' actions, including the Student Safety Plan.

125. Defendants' actions and the Student Safety Plan negatively impacts Student Plaintiffs' ability to receive an education, creating a hostile environment where Student Plaintiffs experience sexual harassment and loss of dignity at the hands of their school every day.

126. Federal Defendants have exceeded their statutory authority, acted arbitrarily and capriciously, and violated plaintiffs' constitutional rights by adopting a legislative rule redefining "sex" under Title IX to include "gender identity" and enforcing that rule in a manner that effectively requires DISTRICT to allow students to use the locker rooms and restrooms of the opposite sex.

127. Federal Defendants have acted without observing the proper administrative procedure for adopting and enforcing such a new legislative rule, which includes notice and comment under the APA and presidential approval under Title IX.

128. It is a violation of the right to bodily privacy to force students to have their partially or fully unclothed bodies viewed by students of the opposite sex.

129. The right to bodily privacy also bars the government from forcing students into situations where they risk exposure of their unclothed body to the opposite sex.

130. Minors have a fundamental right to be free from compelled intimate exposure of their bodies to members of the opposite sex, which is violated when the defendants force them to use the restrooms and locker rooms with students of the opposite sex.

131. Defendants are violating the parental right to control the upbringing and education of one's child by exposing Parent Plaintiffs' children to the opposite sex in intimate, vulnerable settings like restrooms, locker rooms, and showers, especially where their children, the opposite-sex children, or both, may be in a state of undress

or even naked. District Defendants are further violating the rights of Parent Plaintiffs in administering surveys to students delving into personal and family matters without advance notice, knowledge or consent of parents and guardians.

132. Providing single-sex restrooms, locker rooms, and shower facilities does not violate Title IX, so long as the facilities provided for one sex are comparable to the facilities provided to the other sex.

133. Defendants' actions and the Student Safety Plan violate Plaintiffs' free exercise rights under the United States Constitution and state statutory law.

134. Plaintiffs are suffering and continue to suffer irreparable harm.

135. Plaintiffs have no adequate remedy at law.

**FIRST CLAIM FOR RELIEF (FEDERAL DEFENDANTS):**
**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

136. Plaintiffs re-allege and incorporate all matters set forth in ¶¶ 1 through 135 herein.

137. Federal Defendants promulgated, and are enforcing, a new legislative rule that redefines the term "sex" in Title IX and its accompanying regulations to mean, or at least include, "gender identity."

138. USDOE has expressed its intention to enforce this new redefinition of "sex" as a legislative rule against DISTRICT.

139. USDOE's new legislative rule contradicts the text, structure, legislative history, and historical judicial interpretation of Title IX, all of which confirm that "sex" means male and female in the binary and biological sense.

140. According to USDOE's new legislative rule, Title IX requires schools to permit students to use restrooms, locker rooms, and showers based on their gender identity rather than their biological sex.

141. USDOE has communicated this new legislative rule to school districts nationwide via a "Dear Colleague" letter dated May 13, 2016 (Exhibit K) and stated that their failure to comply with it will result in investigation and enforcement action up to and including withdrawal of millions of dollars in federal funding.

142. USDOE's promulgation and enforcement of this new legislative rule are reviewable actions under the Administrative Procedure Act ("APA") pursuant to 20 U.S.C § 1683.

143. USDOE's actions are also final, and there is no other adequate remedy because the Student Safety Plan binds DISTRICT such that Plaintiffs cannot get relief unless the Rule is set aside, and the Federal Defendants are enjoined from continuing to communicate and enforce the new rule redefining the meaning of "sex." Plaintiffs continue to be denied an effective remedy, despite the remedial actions alleged in ¶ 39, because the Rule remains in effect.

144. Plaintiffs have suffered a legal wrong as a direct result of USDOE's actions, because Plaintiffs' constitutional and statutory rights were and continue to be violated by the Student Safety Plan, which is the direct result of USDOE's enforcement of its new rule.

145. Under the APA, a reviewing Court must "hold unlawful and set aside agency action" in one or more of four instances that apply to this case:

- If the agency action is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C);
- If the agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A);
- If the agency action is "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B); and
- If the agency action is "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

146. USDOE's action here violates all four of these standards and should be held unlawful and set aside.

147. Plaintiffs ask this Court (1) to set aside and remove from its official website all guidance documents, (*See* ¶¶ 32, 39; Exs. H-N), to the extent that they incorporate gender identity within the meaning of "sex" for purposes of Title IX, as well as the Student Safety Plan, and (2) to declare and enjoin USDOE and USDOJ from further enforcing Title IX in a manner that requires DISTRICT to give any students the right of entry to, and use of, the private facilities (including locker rooms, showers and restrooms) designated for students of the opposite sex.

***USDOE's Action Is Unlawful under the APA Because It is in Excess of Statutory Jurisdiction, Authority, or Limitations***

148. USDOE's actions in promulgating and enforcing its new rule are "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,"

because they redefine the unambiguous term "sex" and add gender identity to Title IX without the authorization of Congress.

149. Congress has not delegated to USDOE the authority to define or redefine unambiguous terms in Title IX.

150. Title IX does not require that DISTRICT or any other school open its girls' restrooms, locker rooms and shower rooms to biological males who identify as female, nor does it require that DISTRICT open their boys' facilities to biological females who identify as male.

151. USDOE's unilateral decree that "sex" in Title IX means, or includes, "gender identity," which requires schools to allow males who identify as female to use the girls' facilities, and vice versa, requires DISTRICT to give students the right of entry and use of opposite sex locker and shower rooms, and requires DISTRICT to give all students right of entry and use of the restrooms that correspond to their gender identity, irrespective of their biological sex.

152. This new rule is not supported by Title IX's text, implementing regulations, or legislative history.

153. Therefore, USDOE's rule was promulgated and enforced "in excess of statutory jurisdiction, authority or limitations, or short of statutory right[,]" *See* 5 U.S.C. § 706(2)(C). This Court should hold USDOE's rule unlawful and set it aside, including removing it from its official website.

154. Additionally, even if USDOE's rule was interpretive, it would still exceed USDOE's statutory authority and should be declared unlawful and set aside.

***USDOE's Action Is Unlawful under the APA Because It is Arbitrary, Capricious, an Abuse of Discretion, or Not in Accordance with Law***

155. USDOE's actions in promulgating and enforcing its new rule are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *See* 5 U.S.C. § 706(2)(A).

156. Congress requires that whenever an agency takes action it do so after engaging in a process by which it "examine[s] the relevant data and articulate[s] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Veh. Mfrs. Ass'n. v. State Farm Ins.*, 463 U.S. 29, 43 (1983) (quotation omitted).

157. An agency action is "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or product of agency expertise." *Motor Veh. Mfrs. Ass's v. State Farm Ins.*, 463 U.S. at 43.

158. USDOE has given no explanation for its redefinition of "sex" in Title IX, whereby USDOE unilaterally decreed that the term "sex" in Title IX means, or includes, gender identity; requires DISTRICT to give Student A right of entry and use of opposite sex locker and shower rooms; and requires DISTRICT to give all students access to the facilities that correspond to their gender identity, if the students desire to use them.

159. USDOE has given no explanation of the relevant factors that were the basis of its actions, and USDOE has failed to consider important implications and adverse consequences caused by allowing biological boys and girls to share intimate settings, including: the language and structure of Title IX and its regulations; the congressional and judicial histories of Title IX and its regulations; the practical and constitutional harms created by its unlawful application of Title IX; and the violation of Title IX caused by this unlawful application.

160. USDOE's action was also made without a rational explanation, inexplicably departed from established policies, or rested on other considerations that Congress could not have intended to make relevant.

161. USDOE has offered no explanation for its rule redefining "sex"; the rule departed from the established Title IX policy that allowed schools to maintain private facilities separated by biological sex; and the rule rested on considerations related to "gender identity" despite the fact that the legislative history indicates Congress did not intend "sex" to mean anything other than biological sex.

162. USDOE's legislative action was also taken even though it is contrary to law or regulation.

163. USDOE's rule purporting to redefine Title IX violates Title IX as it applies to the very group Title IX was created to protect by creating a hostile environment for Girl Plaintiffs.

164. USDOE's promulgation and enforcement of its rule is thus arbitrary, capricious, an abuse of discretion, and not in accordance with law. This Court should

therefore hold that it is unlawful and set it aside. Additionally, even if USDOE's rule was interpretive, it would still be arbitrary, capricious, an abuse of discretion, and not in accordance with law, and so should be declared unlawful, set aside and removed from its official website.

***USDOE's Action Is Unlawful under the APA Because It is Contrary to Constitutional Right, Power, Privilege, or Immunity***

165. For the reasons set forth herein, USDOE's actions are "contrary to constitutional right, power, privilege, or immunity." *See* 5 U.S.C. § 706(2)(B).

166. USDOE's legislative rule is an unlawful application of Title IX contrary to the Constitution because it violates the privacy rights of Student Plaintiffs, their parents' fundamental liberty interest in controlling their children's upbringing and education, and the rights of some Student Plaintiffs and their parents to freely live out their religious beliefs.

167. Also, USDOE's legislative rule is in violation of the Spending Clause of the United States Constitution, under which Title IX was enacted, in that Congress uses its Spending Clause power to generate legislation in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions.

168. Congress must clearly and unambiguously state the conditions to which the States are agreeing in exchange for federal funds, so that the States can knowingly decide whether to accept the funding. The crucial inquiry is whether Congress spoke so clearly that it can be fairly said that the State could make an informed choice.

169. Requiring schools to allow biological females access to facilities designated for males cannot pass this test, no matter how the females identify. Nor can allowing biological males access to facilities designated for females pass this test, no matter how the males identify.

170. As set forth herein, the plain language of the text, along with the legislative history, clearly indicates that Congress intended that (1) "sex" means "biological sex"; (2) Title IX prevents discrimination based on biological sex; and (3) Title IX allows sex-separated restrooms, locker rooms and showers.

171. Further, the implementing regulations specifically allow schools to maintain restrooms, locker rooms and showers separated by biological sex. 34 CFR 106.33.

172. For over 40 years of Title IX's existence, it has been universally understood by schools that receive federal education funding that Title IX's definition of "sex" does not include gender identity.

173. It has likewise been universally understood by schools that received federal education funding that maintaining separate restrooms, locker rooms, showers and other private facilities on the basis of biological sex is consistent with Title IX.

174. No school could have possibly made an informed choice, because no school could have known that the funds it agreed to accept were conditioned on allowing cross-sex private facilities, or otherwise recognizing gender identity as within the meaning of the term "sex."

175. For these reasons, this Court should hold USDOE's actions unlawful, set aside its Guidance Documents (Exs. H-K) and the Student Safety Plan (Ex. A), and enjoin it, along with USDOJ, from further communicating to DISTRICT the new rule that "sex" in Title IX includes "gender identity."

176. Additionally, even if USDOE's rule was interpretive, it would still be contrary to constitutional right, power, privilege, or immunity and should be declared unlawful, set aside and removed from its official website.

***USDOE's Action Is Unlawful under the APA Because It is Without Observance of Procedure Required by Law***

177. For the reasons set forth herein, USDOE's actions were taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

178. The rule imposes rights and obligations which, through administrative enforcement actions, applies generally to and binds all school districts, including DISTRICT.

179. Under the Administrative Procedure Act, any "rules which do not merely interpret existing law or announce tentative policy positions but which establish new policy positions that the agency treats as binding must comply with the APA's notice-and-comment requirements, regardless of how they initially are labeled." 72 Fed. Reg. 3433.

180. The United States Supreme Court has additionally ruled that all legislative rules, which are those having the force and effect of law and are accorded weight in agency adjudicatory processes, are subject to notice-and-comment requirements. *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1204 (2015).

181. "Notice-and-comment rulemaking" requires that USDOE (1) issue a general notice to the public of the proposed rule-making, typically by publishing notice in the Federal Register; (2) give interested parties an opportunity to submit written data, views, or arguments on the proposed rule, and consider and respond to significant comments received; and (3) include in the promulgation of the final rule a concise general statement of the rule's basis and purpose.

182. Notice-and-comment rulemaking also requires that USDOE consider all the relevant comments offered during the public comment period before finally deciding whether to adopt the proposed rule.

183. Additionally, under Title IX all final rules, regulations, and orders of general applicability issued by USDOE must be approved by the President of the United States, who has hitherto declined to do so.

184. USDOE promulgated and enforced its new rule redefining "sex" in Title IX to include "gender identity" without notice and comment as required by law. 5 U.S.C. § 553. It promulgated this new legislative rule without signature by the president as required by Title IX. 20 U.S.C. § 1682.

185. Simply stated, USDOE did not follow the required procedure when it adopted its new rule defining "sex" in Title IX to mean, or include, gender identity. This Court should therefore hold that it is unlawful, set it aside and remove it from its official website.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

**SECOND CLAIM FOR RELIEF**
**(Against DISTRICT and the FEDERAL DEFENDANTS):**
**VIOLATION OF THE FUNDAMENTAL RIGHT TO PRIVACY**

186. Plaintiffs re-allege all matters set forth in ¶¶ 1 through 185 and incorporate them herein by reference.

187. "Fundamental rights" are rights deeply rooted in this nation's history and tradition and are implicit in the concept of ordered liberty, grounded in the Fourteenth Amendment's Due Process Clause.

188. Numerous courts have recognized a fundamental right to bodily privacy, which right includes a right to privacy of one's fully or partially unclothed body and the right to be free from State-compelled risk of intimate exposure of oneself to the opposite sex.

189. Student Plaintiffs, like everyone else, enjoy the fundamental right to bodily privacy.

190. The right to be free from State-compelled risk of intimate exposure of oneself to the opposite sex, while part of the right to bodily privacy, is a fundamental right grounded in the Fourteenth Amendment's Due Process Clause.

191. Throughout its history, American law and society have recognized and upheld a commitment to protecting citizens, and especially children, from suffering the risk of exposing their bodies, or their intimate activities, to the opposite sex.

192. From colonial times, the law allowed civil actions against "Peeping Toms", and as American law developed after the Founding, it criminalized surreptitiously viewing others while they reasonably expect privacy.

193. These protections are heightened for children.

194. While pornography involving only adults is legal and cannot be constitutionally banned, federal law makes it a crime to possess, distribute, or even view images of naked children. Moreover, nearly every state, including Oregon, has laws criminalizing "sexting," which occurs when someone (often a minor) sends a naked picture of himself/herself via email, text messaging, or other electronic means to a minor.

195. In the late 1800s, as women began entering the workforce, the law developed to protect privacy by mandating that workplace restrooms and changing rooms be separated by sex. Massachusetts adopted the first such law in 1887. By 1920, 43 of the (then) 48 states had similar laws protecting privacy by mandating sex-separated facilities in the workplace.

196. Because of our national commitment to protect our citizens, and especially children, from the risk of being exposed to the anatomy of the opposite sex, as well as the risk of being seen by the opposite sex while attending to private, intimate needs, sex-separated restrooms, locker rooms and showers are an American social and modesty norm ubiquitous in public places, including public schools.

197. Historically, purposefully entering a restroom or locker room designated for the opposite biological sex has been considered wrongful, and even criminal, behavior, and historically there has been no mixing of the biological sexes in school restrooms, locker rooms or showers.

198. Freedom from the risk of compelled intimate exposure to the opposite sex, especially for minors, is a fundamental right deeply rooted in this nation's history and tradition and is also implicit in the concept of ordered liberty.

199. The ability to be clothed in the presence of the opposite biological sex, along with the freedom to use the restroom, locker room and shower away from the presence of the opposite biological sex, is fundamental to most people's sense of self-respect and personal dignity, including plaintiffs', who should be free from State-compelled risk of exposure of their bodies, or their intimate activities.

200. If government is granted the far-reaching and extreme power to compel its citizens to disrobe or risk being unclothed in the presence of the opposite sex, little personal liberty involving our bodies would remain.

201. The government may not infringe fundamental rights, unless the infringement satisfies strict scrutiny review, which requires that the government demonstrate that the law or regulation furthers a compelling interest using the least restrictive means available.

202. The Student Safety Plan allows Student A, a biological female, and other biological females the right of entry to, and use of, the boys' locker rooms, showers and restrooms any time she wants.

203. The Student Safety Plan similarly allows biological male students who may or may not identify as female access and use of the girls' locker rooms, showers and restrooms, and it similarly allows biological female students who may or may not identify as male access and use of the boys' locker rooms, showers and restrooms.

204. For these reasons, the Student Safety Plan requires Student Plaintiffs to risk being intimately exposed to those of the opposite biological sex, thereby infringing Student Plaintiffs' fundamental right to privacy in their unclothed bodies, as well as their fundamental right to be free from government-compelled risk of intimate exposure to the opposite sex, without any compelling justification.

205. Defendants have no compelling interest to justify forcing school children to share restrooms and locker rooms with opposite sex classmates, and Defendants have not used the least restrictive means of serving any interest they may have.

206. Accordingly, the Student Safety Plan fails strict scrutiny review and is unconstitutional as applied to any minor, including the Student Plaintiffs.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

## THIRD CLAIM FOR RELIEF
## (Against DISTRICT and the FEDERAL DEFENDANTS):
## VIOLATION OF PARENTS' FUNDAMENTAL RIGHT TO DIRECT THE EDUCATION AND UPBRINGING OF THEIR CHILDREN

207. Plaintiffs re-allege all matters set forth in ¶¶ 1 through 185 and incorporate them herein.

208. The right of parents to make decisions concerning the care, custody, and control of their children is a fundamental right protected by the Fourteenth Amendment's Due Process Clause.

209. Included within that parental fundamental right is the power to direct the education and upbringing of one's children, including the right, as well as the

duty, to instill moral standards and values in their children. Additionally, parents enjoy the fundamental right to notice and the opportunity to consent to their children's participation in surveys seeking personal and family information for use by schools and others.

210. Parents' right and duty to instill moral standards and values in their children, and to direct their education and upbringing, encompasses the right to determine whether and when their minor children endure the risk of being exposed to members of the opposite sex in intimate, vulnerable settings like restrooms, locker rooms and showers.

211. Parents also have a fundamental right to determine whether and when their children will have to risk being exposed to opposite sex nudity at school, as well as a fundamental right to determine whether their children, while at school, will have to risk exposing their own undressed or partially unclothed bodies to members of the opposite sex.

212. Defendants have no legal authority to dictate whether and when minor children will risk being exposed to the opposite sex and/or opposite-sex nudity in such settings in derogation of each parents' right to decide for his or her own child, especially when those children's parents object. Defendants further have no legal authority to seek or obtain personal and family confidential information from students without the knowledge and consent of their parents or guardians.

213. All Parent Plaintiffs object to the Student Safety Plan and agree that they do not want their minor children to endure the risk of being exposed to the

opposite sex in intimate, vulnerable settings like locker rooms, showers and restrooms, nor do they want their minor children to attend to their personal, private bodily needs in the presence of members of the opposite sex.

214. All Parent Plaintiffs desire to raise their children with a respect for traditional modesty, which requires that one not undress or use the restroom in the presence of the opposite sex.

215. All Parent Plaintiffs desire to prevent their children from enduring the risk of being observed while undressing by members of the opposite sex, or enduring the risk of being exposed to the unclothed bodies of members of the opposite sex.

216. Some Parent Plaintiffs, including JON AND KRIS GOLLY, object to the Student Safety Plan for religious reasons because of their sincerely-held religious beliefs about modesty and other religious doctrines.

217. The Student Safety Plan, instituted and enforced by the Defendants, impermissibly infringes and undermines the right of Parent Plaintiffs to direct the upbringing and education of their children.

218. Defendants may not infringe fundamental rights, including parents' fundamental right to direct the education and upbringing of their children, unless the infringement satisfies strict scrutiny review, which requires that Defendants demonstrate that the law or regulation furthers a compelling interest using the least restrictive manner available.

219. Defendants have no compelling interest to justify forcing school children to share restrooms, locker rooms and showers with opposite sex students, and

Defendants have not used the least restrictive means of serving any interest they may have.

220. Accordingly, the Student Safety Plan fails strict scrutiny review and unconstitutionally infringes on parents' fundamental right to direct the education and upbringing of their children.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

**FOURTH CLAIM FOR RELIEF**
**(Against DISTRICT):**
**VIOLATION OF TITLE IX**

221. Plaintiffs re-allege all matters set forth in ¶¶ 1 through 185 and incorporate them herein.

222. Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a).

223. Courts have given Title IX broad effect in order to combat sex discrimination in the educational setting.

224. Title IX is a broadly-written general prohibition on discrimination based on sex that does not explicitly list every discriminatory act prohibited.

225. There is an implied right of action under Title IX and no requirement that a claimant must first exhaust administrative remedies before bringing a Title IX claim.

226. Allowing people to use restrooms, locker rooms or showers designated for the opposite biological sex violates privacy and creates a sexually harassing hostile environment.

227. Exposure to opposite-sex nudity creates a sexually harassing hostile environment.

228. The Student Safety Plan allows some students to use locker rooms, restrooms and showers designated for students of the opposite biological sex.

229. The Student Safety Plan needlessly subjects Student Plaintiffs to the risk that their partially or fully unclothed bodies will be exposed to students of the opposite sex and that they will be exposed to opposite-sex nudity, causing the Student Plaintiffs to experience embarrassment, humiliation, anxiety, intimidation, fear, apprehension, stress, degradation, and loss of dignity.

230. Some Student Plaintiffs are avoiding the restroom as a result of the embarrassment, humiliation, anxiety, intimidation, fear, apprehension, stress, degradation, and loss of dignity they experience because of the Student Safety Plan.

231. Some Student Plaintiffs are not able to concentrate as well in school as they did before because of these policies.

232. All Student Plaintiffs find that school has become intimidating and stressful as a result of the Student Safety Plan.

233. The Student Safety Plan violates Title IX in that it produces unwelcome sexual harassment and create a hostile environment on the basis of sex.

234. As recited below, Student Plaintiffs satisfy the five elements of a Title IX in that they each: (1) belong to a protected group in that they are female and male students at an educational institution that receives federal funds; (2) were and are subjected to harassment in that the Student Safety Plan allows biological males to use girls' locker rooms, restrooms and showers, and further allows biological females to use the boys' locker rooms, restrooms and showers, thereby creating a sexually harassing hostile environment; (3) were and are subjected to harassment based on sex; (4) were subjected to harassment so pervasive or severe that it altered the conditions of plaintiff's education; and (5) can establish knowledge by school officials.

235. There are real and significant differences between the biological sexes, including but not limited to differences in anatomy and physiology, which differences do not disappear when biological males identify as female, and vice versa.

236. Biological and anatomical differences between the sexes is the reason that Title IX and its implementing regulations allow for separate living facilities, restrooms, locker rooms and changing areas for each biological sex to recognize that each biological sex has unique needs and vulnerabilities when using these facilities.

237. Title IX and its implementing regulations further allow for separate living facilities, restrooms, locker rooms and changing areas for each biological sex based on the recognition that permitting a biological male to enter and use such facilities designated for females, or permitting a biological female student to enter and use such facilities designated for males would be sexually harassing to the opposite sex.

238. Moreover, both male and female Student Plaintiffs experience humiliation, anxiety, intimidation, fear, apprehension, stress, degradation, and loss of dignity as a result of the Student Safety Plan permitting the opposite sex to be in locker rooms and restrooms designated for their biological sex.

239. It is the significant and real differences between the biological sexes that creates the hostile environment, which is harassment.

240. The harassment created by the Student Safety Plan, because it denies real differences between the biological sexes, is sufficiently severe or pervasive (either of which is actionable) in that it is ongoing and continuous, occurring every time any of the Student Plaintiffs use the locker room, showers or restroom. It is further severe in that it places the bodily privacy of both sexes at risk.

241. The environment is one that a reasonable person would find hostile or abusive, and one that Student Plaintiffs in fact perceive to be so.

242. The sexually harassing hostile environment is threatening and humiliating, and has altered the conditions of Student Plaintiffs' educational opportunities, benefits, programs and/or activities.

243. DISTRICT officials are aware of the hostile environment and the fact DISTRICT's own official policies (including the Student Safety Plan) are the direct cause of this hostile environment because some Student Plaintiffs, and some Parent Plaintiffs, have contacted DISTRICT officials, including the principal and superintendent, about the hostile environment. Even though these officials have authority to stop the hostile environment, and despite the knowledge that their

policies are creating a hostile environment based on sex, Defendants have not remedied the situation. Instead, these officials have advised that, if the students perceive the environment to be hostile, the students should remove themselves from it by accepting an "accommodation" or using a different restroom.

244. Schools cannot escape liability for Title IX violations by requiring the victim of harassment to remove themselves from the hostile environment or otherwise suggesting they are responsible for the harassment.

245. Additionally, the accommodations themselves violate Title IX in that some Girl Plaintiffs have been told that instead of using the locker room to change for PE class, they may change their clothing in a nurse's office located on the other side of the school. This facility for changing is inferior to the locker room facilities provided for boy students in violation of 34 CFR § 106.33, which provides that schools receiving federal funding "may provide separate toilet, locker room, and shower facilities on the basis of sex, [as long as] such facilities provided for students of one sex [are] comparable to such facilities provided for students of the other sex."

246. Additionally, the accommodations themselves violate Title IX in that some of the Student Plaintiffs have been told that, if they are uncomfortable using a restroom because a member of the opposite sex is present, they may find another restroom. Because there are only five minutes between classes, any student leaving one restroom to find another is almost certain to be tardy and will also miss instructional time.

247. The Student Safety Plan violates Title IX by creating a hostile environment on the basis of sex.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

**FIFTH CLAIM FOR RELIEF**
**(Against FEDERAL DEFENDANTS):**
**RELIGIOUS FREEDOM RESTORATION ACT**
**42 USC §§ 2000bb et seq**
**43**

248. Plaintiffs re-allege all matters set forth in ¶¶ 1 through 184 and incorporate them herein.

249. Many Student Plaintiffs have religious convictions that they practice modesty. These students have the sincere religious belief that they must not undress, or use the restroom, in the presence of the opposite biological sex, and also that they must not be in the presence of the opposite biological sex while the opposite biological sex is undressing or using the restroom.

250. Some Parent Plaintiffs, including JON AND KRIS GOLLY, have the sincere religious belief that they must teach their children to practice modesty. Their religious faith also requires them to protect the modesty of their children. These parents have the sincere religious belief that their children must not undress, or use the restroom, in the presence of a member of the opposite biological sex, and also that they must not be in the presence of the opposite biological sex while the opposite biological sex is undressing or using the restroom.

251. The Student Safety Plan requires Student Plaintiffs to use restrooms, locker rooms and shower rooms, knowing that a student of the opposite biological sex

either is present with them, or could enter while they are using these private facilities.

252. The Student Safety Plan prevents Student Plaintiffs from practicing the modesty that their faith requires of them, and it further interferes with Parent Plaintiffs teaching their children traditional modesty and insisting that their children practice modesty, as their faith requires of Parent Plaintiffs.

253. Complying with the requirements of the Student Safety Plan thus places a substantial burden on the Plaintiffs' exercise of religion by requiring Plaintiffs' to choose between the benefit of a free public education and violating their religious beliefs.

254. Federal Defendants have no "compelling interest" that would justify burdening Plaintiffs' exercise of religion in this manner, nor have they used the "least restrictive means" to achieve their purported interest in burdening Plaintiffs' exercise of religion in this manner.

255. The Student Safety Plan thus violates Plaintiffs' rights protected by the Religious Freedom Restoration Act.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

**SIXTH CLAIM FOR RELIEF**
**(Against DISTRICT and the FEDERAL DEFENDANTS):**
**VIOLATION OF THE FIRST AMENDMENT'S GUARANTEE OF FREE EXERCISE OF RELIGION**

256. Plaintiffs re-allege all matters set forth in ¶¶ 1 through 255 and incorporate them herein.

257. The First Amendment provides that Congress shall make no law respecting an establishment of religion, nor prohibiting the free exercise thereof.

258. The Student Safety Plan burdened the free exercise rights of some Plaintiffs as previously alleged.

259. Laws that burden free exercise, but are not neutral or generally applicable, are subject to strict scrutiny.

260. The Student Safety Plan is not generally applicable in that it does not expressly allow all students to use the opposite-sex restrooms, locker rooms and showers, but arguably only students who perceive themselves as a different gender than their biological sex, and further may allow accommodations of some, but not all, students.

261. Similarly, the Student Safety Plan is not generally applicable in that it applies only to one student, Student A, but does not apply to all students, allowing them to access whatever locker and shower rooms they want.

262. The Student Safety Plan does not even apply to all students who perceive their gender identity to be different than their biological sex.

263. Because the Student Safety Plan is not generally applicable, it is subject to strict scrutiny, which it fails.

264. Additionally, the Student Safety Plan is subject to strict scrutiny and fails the strict scrutiny standard because, in addition to burdening free exercise

rights, it also burdens other constitutional rights, including the privacy rights of Student Plaintiffs and the parental rights of Parent Plaintiffs as alleged above.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

**SEVENTH CLAIM FOR RELIEF**
**PUBLIC ACCOMMODATION DISCRIMINATION**
**ORS 659A.400 et seq, ORS 659A.885**
**(Against DISTRICT and STATE DEFENDANTS)**

265. Plaintiffs re-allege all matters set forth in ¶¶ 1 through 255 and incorporate them herein.

266. Oregon public elementary and secondary schools, including Dallas High School and other District schools, are places of public accommodation within the meaning of ORS 659A.400, and discrimination is prohibited in such places based on religion, sex and sexual orientation, including gender identity.

267. DISTRICT and STATE DEFENDANTS have engaged in discrimination against DISTRICT students, parents and those entering school premises on grounds of their sex and sexual orientation in that they have been deprived of the right to utilize restrooms, locker rooms and showers without encountering persons of the opposite biological sex.

268. DISTRICT and STATE DEFENDANTS have engaged in discrimination against DISTRICT students, parents and those entering school premises on grounds of their religion in that they have been deprived of their right to utilize restrooms,

locker rooms and showers without encountering persons of the opposite biological sex contrary to their sincerely-held religious beliefs.

269. STATE DEFENDANTS have further participated in, condoned, aided, abetted and/or incited the unlawful discrimination in the foregoing paragraphs against Plaintiffs contrary to ORS 659A.406.

270. Plaintiffs are each entitled to recover actual damages or $200, whichever is greater, pursuant to ORS 659A.885(7) against District, and further to declaratory and injunctive relief against State Defendants prohibiting the discrimination alleged above.

271. Plaintiffs are further entitled to recover reasonable and necessary attorney fees and costs incurred in the prosecution of this action pursuant to ORS 21.107 and 659A.885(1) and (7)(d) against District and State Defendants.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

## EIGHTH CLAIM FOR RELIEF
## (Against DISTRICT)
## DISCRIMINATION IN EDUCATION (ORS 659.850)

272. Plaintiffs re-allege all matters set forth in ¶¶ 1 through 271 and incorporate them herein.

273. DISTRICT has subjected plaintiffs to discrimination on the basis of religion, sex and sexual orientation as defined in ORS 659.850(1) in public elementary and secondary education programs, services and schools where such programs, services and schools are financed in whole or in part by moneys appropriated by the

Legislative Assembly without providing reasonable accommodations based on the health and safety needs of plaintiffs and others coming on school premises.

274. Plaintiffs have unsuccessfully presented their grievances and objections to DISTRICT's school board on multiple occasions within 180 days of the policies causing the alleged discrimination, as required by ORS 659.860(3).

275. Plaintiffs are entitled to recover actual damages or $200, whichever is greater, pursuant to ORS 659.860(1).

276. DISTRICT's violation of ORS 659.850 should subject DISTRICT to appropriate sanctions, which may include withholding of all or part of state funding for the period of the discrimination.

277. Plaintiffs are further entitled to recover reasonable and necessary attorney fees and costs incurred in the prosecution of this action pursuant to ORS 21.107, ORS 659.860(7), 659A.885(1) and (7)(d).

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment as follows and request the following relief:

A. That this Court enter preliminary and permanent injunctions restraining all Defendants, their officers, agents, employees, and all other persons acting in concert with them, from enforcing the Student Safety Plan and ordering them to permit only biological females to enter and use DISTRICT's girls' restrooms,

locker rooms and showers, and permit only biological males to enter and use DISTRICT's boys' restrooms, locker rooms and showers;

B. That this Court hold unlawful, set aside and remove from its official websites the Federal Defendants' Rule that redefines the word "sex" in Title IX to mean, or include, gender identity, which it announced in at least the following documents—U.S. Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence,* 5 (Apr. 2014); U.S. Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities,* 25 (Dec. 2014); U.S. Department of Education, Office for Civil Rights, *Title IX Resource Guide,* 1, 15, 16, 19, 21-22 (Apr. 2015);

C. That this Court enter preliminary and permanent injunctions restraining the Federal Defendants, their officers, agents, employees, and all other persons acting in concert with them, from taking any action based on USDOE's new rule that redefines the word "sex" in Title IX, including implementing the revocation of funding as indicated in the Dear Colleague Letter sent to DISTRICT and from communicating to DISTRICT through these documents or in any other manner that the term "sex" means, or includes, gender identity or that Title IX bars gender identity discrimination or mandates that regulated entities allow students to use restrooms, locker rooms and showers based on their gender identity;

D. That this Court enter a declaratory judgment declaring that the Student Safety Plan impermissibly burdens the Student Plaintiffs' constitutional right to

privacy; impermissibly burdens the Student Plaintiffs' constitutional right to be free from State-compelled risk of intimate exposure of themselves and their intimate activities to members of the opposite sex; impermissibly burdens Parent Plaintiffs' constitutional right to direct the upbringing and education of their children;

E. Enter declaratory judgment declaring that Defendants must provide parents advance notice of School Safety Plan and the opportunity to consent or object to its implementation with respect to their child(ren);

F. Enter declaratory judgment that Defendants must provide parents advance notice of surveys or assessments seeking personal and family information of a confidential nature, must secure consent of parents in advance of administering such surveys or assessments, and prohibiting Defendants from compelling student participation in such surveys or assessments;

G. That this Court award statutory damages, and compensatory damages for violation of Plaintiffs' constitutional and statutory rights, except those claimed under the Administrative Procedure Act and against the Oregon Department of Education and Governor Kate Brown arising under federal law;

H. That this Court retain jurisdiction of this matter for the purpose of enforcing any Orders;

I. That this Court award Plaintiffs costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 775 ILCS 35/20, 28 U.S.C. § 2412, and 42 U.S.C § 1988;

J. That this Court award Plaintiffs costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with ORS 21.107, ORS 659.860(7), 659A.885(1) and (7)(d).

K. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiffs; and

L. That this Court grant such other and further relief as the Court deems just and equitable in the circumstances.

DATED this 13TH day of November, 2017.

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