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Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Portland Division

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,

Plaintiffs,

v.

Case No.

COMPLAINT

5 U.S.C. § 500 *et seq* (APA)
42 USC § 1983 (Privacy, Religion)
20 U.S.C. § 1681 *et seq* (Title IX)
42 USC § 2000bb, *et seq* (RFRA)
ORS 659A.400 *et seq* (civil rights)
ORS 659.850 *et seq* (discrimination
in education)

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 policies (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

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).

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