

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION

MARY SMITH, a minor; by and through her
mother and guardian JANE DOE,
-and-
JANE DOE,

Plaintiffs,

-v-

BOARD OF EDUCATION OF FREDERICK
COUNTY, MARYLAND, consisting of its
President Brad W. Young, Vice President, Liz
Barrett, and members Michael Bunitsky,
Colleen Cusimano, Ken Kerr, April Miller,
Joy Schaefer, and Theresa R. Alban,
Superintendent of Schools, each in their
official capacities; and FREDERICK
COUNTY PUBLIC SCHOOLS.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Mary Smith, by and through her mother Jane Doe, and Jane Doe, state as follows:

1. Mary Smith's civil rights, including her fundamental right to bodily privacy, are being intentionally violated contrary to the United States and Maryland Constitutions and statutory laws.
2. Jane Doe's fundamental parental rights to the care, custody, control, upbringing and information regarding her child is also being intentionally violated.
3. Those laws protecting her include the First Amendment, Fourteenth Amendment, Title IX, invasion of privacy and seclusion, the Maryland Constitution, Declaration of Rights: Freedom of Speech and Due Process (Articles 24 & 40, Edu. Art. 7-121), Equality of Rights Not Denied On Basis of Sex (Article 46), Separation of Powers-Legislative Proceedings and Government

derived of the people and its English Common Law (Articles 1, 5, 8 & 10), and Md. Ann. Code Education Articles §§ 7-424 (Bullying), § 7-301 (Compulsory Attendance), 2-205 (Powers and Duties of the Board [of Education]), § 4-117(b)(1)(Construction or Remodeling of Buildings to conform to State codes), § 5-301 (Public School Construction and Capital Improvements), and Md. Ann. Code Public Safety Article § 12-503 (Construction of State Buildings) and its authority via regulations and construction codes including COMAR 05.02.01, The State Model Performance Code (MPC) For State Buildings (Re: Executive Order 01.01.1992.11; dated 1992), and the International Building Code, each adopted thereunder, which requires separate facilities on the basis of sex.

JURISDICTION AND VENUE

4. This action arises under 42 U.S.C. §§ 1983 *et seq.* (the “Civil Rights Act”) to redress the deprivation of rights secured by the Fourteenth Amendment to the United States Constitution, 20 U.S.C. §§ 1681 *et seq.* (“Title IX”), the State of Maryland Constitution and common law and the aforesaid state statutes.
5. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1361 and 1367.
6. The Court has jurisdiction to issue the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.
7. The Court has jurisdiction to award nominal and compensatory damages under 28 U.S.C. § 1343(a)(4).
8. The Court has jurisdiction to award reasonable attorney’s fees and costs under 28 U.S.C. § 2412, 42 U.S.C. § 1988.
9. Venue lies in this District because a substantial part of the events giving rise to all claims occurred here where the District Defendant is located, pursuant to 28 U.S.C. § 1391(b) and (e).

10. The Court has personal jurisdiction over Defendants because they are domiciled in Maryland.

PARTIES

Plaintiffs

11. Plaintiff and her guardian are citizens of the United States and residents of historic Frederick County, Maryland.

12. Plaintiff Mary Smith is a 15-year-old minor girl. She is a student at a Frederick County High School under the jurisdiction of the Frederick County Board of Education. Mary Smith asserts her civil rights as a woman in her attached, sealed Declaration filed herewith identifying herself and certain protected personal facts (**Exhibit A, incorporated herewith**). Because she is a minor, this action is brought on her behalf by her mother and legal guardian.

13. Jane Doe is the mother of Mary Smith. She is a resident of Frederick County and is experiencing a deprivation of her fundamental right as a parent to the care, custody, control, upbringing and information concerning her daughter. Her Declaration is also attached, in sealed format with certain protected personal facts (**Exhibit B, incorporated herewith**).

Defendants

14. Defendant Board of Education of Frederick County, Maryland (“BOE-FC” or “Board of Education”) is the governing entity of the Frederick County Public Schools (“FCPS”) and is organized and derives its authority from the laws of the State of Maryland.

15. The Board of Education oversees public educational institutions that provide students a pre-kindergarten through 12th grade education.

16. The Board of Education and FCPS receive federal funds and so are subject to the requirements of Title IX.

17. The Board of Education and FCPS includes 66 schools, including 36 elementary schools, 13

middle schools, 10 high schools, 3 public charter schools, an alternative school, a special education school, Flexible Evening High and a Career and Technology Center. Plans are underway to add 2 more elementary schools in the next 3 years.

18. The Board of Education governs the FCPS and its Superintendent, who also sits as secretary-treasurer of the Board of Education, and is the final decision-making authority for all FCPS actions or decisions.
19. The Board of Education is responsible for the enforcement of policies through its decisions and orders to the Superintendent of Schools and administrators, teachers and other employees.
20. At all times relevant herein, the Defendants acted within their scope of authority as elected officials and members of the Board of Education; Theresa Alban, who is appointed to the Board and is the only non-elected member, serves in her capacity as an agent and representative of the Board of Education.

INTRODUCTION

21. In such official capacity, the Board of Education, its members, and FCPS implemented new policies in the fall of 2016 and Spring of 2017, namely Policies 437 (Anti-Bullying and Harassment) and 443 ("Transgender and Gender Non-Conforming Students"), which permit students of one sex to enter and use restrooms, locker rooms and shower facilities ("bath facilities") designated for members of the opposite sex.
22. The policies also allow for males who identify as females to compete against females under Title IX sports programs and share hotel rooms with them on trips, violating the rights of students who are of the female sex.
23. On information and belief, prior to the policies being passed by the Board of Education, for several years the Board of Education and/or FCPS authorized the use of bath facilities by

members of the opposite sex without informing parents of the change and in *ultra vires* to its authority under state or federal law.

24. The said policies, like a sad chapter from the history of the child cults Soviet Komsomol or Young Pioneers in the failed USSR, further calls for government personnel, teachers, administrators and school employees (“government official”) to prevent and refuse parental access to information about their child whenever the school employee deems it might be detrimental to the “best interest” of the child, including a delegation of power to the government official for consideration of the parent’s religious, cultural and political viewpoints involving so-called gender or sexual identity.
25. Defendant Board of Education has policy-making authority not otherwise provided for in the state school bylaws and regulations to establish policies and practices pursuant to education, however, that authority does not extend to re-classifying State construction codes which mandate separate male and female bath facilities in all government buildings including public schools.
26. On information and belief, the General Assembly in 2014, under then-Governor Martin O’Malley, debated and because of the public outcry to protect the state’s children could not pass any state mandate to require bath facility construction Codes to no longer mandate male and female bath facilities, and instead specifically exempted religious education institutions and private schools from any mandate to allow access to bath facilities by members of the opposite sex, while also remaining silent in the law concerning public school bath facilities, consoling parents that the Legislature of Maryland would not force such a policy of opposite sex students being permitted into bath facilities under “gender identity” or other law.
27. The Board of Education has no authority to alter, abolish or amend the state’s construction

codes nor its Legislative policy for male and female bathrooms.

28. Instead, on information and belief, since the Legislative process was foreclosed to the changes desired by some in political positions on the Board of Education, they acted *ultra vires* and passed the policies with minimal public notice and input, not once requesting parental guidance or feedback on the substantive change to the 400-year policy under English common law and American statutory law and jurisprudence of separate bath facilities for children in the schools.
29. Only in history do we see totalitarian regimes that arrogate to itself powers to force children and citizens to undress in front of members of the opposite sex.
30. In Western civilization, the importance of privacy and personal control over one's right to not be forced to undress by a state official in front of a member of the opposite sex is both sacred and the very essence of what the law protects under the jurisprudence of personal freedom and dignity.
31. Defendants purposefully and intentionally violated Plaintiffs' rights and have further attempted to harass and coerce the minor Plaintiff and her mother into abridging their freedom of speech by threatening retaliation, expulsion and permanent negative academic records for failure to use the pronouns now mandated which upon information and belief, call a male a female when the person or government official requires such pronoun use.
32. Only in totalitarian regimes do government officials threaten individuals with retaliation if they do not make government-mandated speech such as this Board of Education is mandating under its policies by forcing students to use pronouns in violation of their right to Free Speech.
33. This case is easily disposed of in favor of Plaintiffs because state law requires the Board of Education to follow the procedures of Free Government, that is, the Legislature creates and passes the laws of the land and no Board of Education can issue, pass, proclaim or require any

policy in contravention to state law, which is exactly what these Defendants have done.

34. Furthermore, the merits of the case in defense of Plaintiffs' civil liberties and constitutional freedoms guaranteed under the Fourteenth Amendment must be and should be easily upheld if we are to remain a civilized society. This is particularly true when considering the Legislature of Maryland has previously indicated that separate facilities for those who suffer from gender dysphoria can be provided as a matter of compliance in private facilities that have public-access. How much more in matters of education and schools, where children are in the "tender years" and puberty can cause pressures and stresses on youth, that we as a civil society uphold common decency and principles of freedom to ensure that youth are protected in their persons and liberties without the tyranny of a very tiny minority.
35. The policies and practice of both secretly imposing bath facility use by opposite sexes and the new policies of 437 and 443 have had a severe and negative impact on Plaintiff Mary Smith. These include feelings of concern and embarrassment, and she stands fearful and concerned for her safety, of the humiliation and stigma of being viewed by members of the opposite sex, and the stigma and threats she is receiving and will receive in these policy mandates. Defendants policies expose her to retaliation, ridicule and permanent negativity in her school records should she fail to comply with the speech and bath facility mandates and be viewed wrongly as "harassing, intimidating or threatening" or "causing mental or emotional harm" just because she speaks the truth and wants to maintain her own decency and privacy.
36. Plaintiff Mary Smith and girls like her are avoiding the bath facilities altogether just to avoid any potential concerns for their privacy and safety. She demands her rights and protections as a woman.
37. Plaintiff Mary Smith is also a victim of prurient acts at her public school bath facility, with the

failure of her school to adequately monitor the bath facilities, providing opportunity for a female student to video her undressing on her phone and to then distribute photos of her body.

38. Such failures in school administrative personnel to monitor the school bath facilities and hotel rooms while on school trips, coupled with the extreme rise in rape of girls in the public-school bath stalls, demonstrates the urgency for prevention of these horrific policy changes by injunction.

FACTS

39. All paragraphs in this complaint are incorporated as if fully set forth herein.
40. On information and belief as recently learned from statements of Board of Education Vice President Liz Barrett to parents at a hearing, the Board of Education has for several years allowed males and females to ignore the sex-specific bathrooms and locker rooms at FCPS schools.
41. This practice was not supported by any Board of Education public policy or state law, but predicated upon a secret, off-the-record agreement with the Superintendent of Schools to begin to allow this practice in the schools.
42. The practice violated the privacy of students and rights of parents.
43. The practice was recently made official public policy of the Board of Education with the passage of Policies 437 and 443 and enforcing regulations (**Exhibit C, attached and incorporated herewith**).
44. Under this illegal practice of the Board of Education, minor Plaintiff was left unsupervised in a girls' locker room at her FCPS school with other students, also against public FCPS policy.
45. One child videoed minor Plaintiff and her friends in various stages of undressing in the bath facility during PE and uploaded it to the internet, while in school. Minor Plaintiff was partially

undressed in the video. The video was discovered by one of minor Plaintiff's friends and a teacher was informed. This was during the time when cell phones were not to be used during school time and were certainly not to be used in locker rooms, but the practice was to not monitor the bath facilities so as to allow anyone to use either male or female facility if they chose to believe their gender identity should permit them entry and use. The lack of supervision also permitted, on information and belief, a sexualized climate in bath facilities at FCPS schools which continues to this day such that many girls no longer use the locker rooms or showers out of fear of being raped, videoed, or otherwise having their privacy invaded.

46. It is mandatory that students participate in PE class and change into clothing appropriate for Physical Education, causing great anxiety and emotional harm to Minor Plaintiff.
47. Minor Plaintiff does not participate in sports or other extracurricular activities that could require her to change her clothes or shower at her school because of this anxiety, depriving her of her right to privacy and involvement in school events.
48. Such secret practices by the Board of Education caused a deprivation of rights and civil liberties for minor Plaintiff and other girls and boys in the public schools, and deprived Jane Doe and other parents of their rights as parents to the protection and care of their children while at school, because Jane Doe was unaware that the school was forcing her daughter to be unsupervised in school locker rooms while other students of the opposite sex were allowed to enter the showers and bath facilities.
49. The policy 443 by the Board of Education has and is causing a deprivation of rights and civil liberties for minor Plaintiff and other girls and boys in the public schools, and deprived Jane Doe and other parents of their rights as parents to the protection and care of their children while at school because minor Plaintiff is concerned that at any moment a male who identifies as

female will enter her bath facility at school and she will feel humiliated, embarrassed and violated.

50. The policy 443 requires that Minor Plaintiff and any student who feels such violation of space be required to leave the locker room and enter a private bath facility, making the majority of students subservient to the minority who are male or female and entering the bath facility of the opposite sex.
51. Defendants have further attempted to harass and coerce the minor Plaintiff and her mother into abridging their freedom of speech by threatening retaliation, expulsion and permanent negative academic records for failure to use the pronouns now mandated which upon information and belief, call a male a female when the person or government official requires such pronoun use. **(Exhibit D, attached and incorporated herewith).**
52. Such humiliation, stress and government pressure has made minor Plaintiff feel belittled, ostracized if she were to speak out and request privacy, and intimidated into potentially undressing in front of males in her locker room just to avoid the stigma of being required to leave.
53. The public policy of the Maryland Legislature is turned on its head by the Board of Education in that the safe space bath facilities for single use are – for the general public – to be for males or females who identify as something other than their sex to use, not a policy to require those majority female students who disagree with males in their bath facilities to be forced to leave the women’s bath facility and endure the stigma and loss of freedom for disagreeing with the Board of Education’s sexual identity politics that have no basis in law or history outside of totalitarian regimes.
54. Minor Plaintiff has a “504” in place because she suffers from severe anxiety. Through

therapy Jane Doe discovered her daughter's anxiety comes from being bullied in school, and observing other students being bullied while school staff does nothing to intervene and stop the bullying, and in one instance she noted in her school file, her teacher joined in making jokes about a student.

55. Minor Plaintiff's anxiety has only suffered worse from the Board of Education's secret policy and new public policy 443 that allows males to enter her bathroom and locker room.
56. The Board of Education's Policy 443 seeks to further erode parental rights by requiring State personnel in schools to keep certain facts from parents under a best interest analysis, which is an improper usurpation and delegation of parental authority to school personnel.
57. If a student is "transgendered" at school but not at home and being allowed to access the school bathroom and locker room of their "chosen" gender, under Policy 443 government officials may be forbidden from informing the child's parents if the official's personal analysis deems the student's parents may object to the transitioning or be opposed to the child's decisions.
58. A parent may not want their child in the private spaces of the opposite sex, regardless of whether they support their child seeking to be transgendered. FCPS is usurping parental rights by allowing a student to use an alternate identity at school than on the child's birth certificate and common use by the parents of the child as stated on school records, and seeks to retain authority to actually change the child's name without parental authority, up to and including alternate given first and surnames, and use of pronouns.
59. School officials have no lawful authority to change a minor's name or call them by any name other than that which the child's parents designate, nor do school officials have authority to change school records of enrolled names of students without parental authority.
60. The Board of Education's FCPS legal counsel is shown on official video explaining how she

informs teachers of how to keep information out of the public domain, including from parents. Members of the Board of Education are also on this video appearing to be comfortable with keeping certain information from parents and that there is only one way they would ever learn the facts of their child's transgenderism, that is via the "official" school record after a request and granting of permission to review that record, which the Policy 443 makes conditionally available only after an analysis by the State personnel whether the parent should know of the information regarding their child's "Transgender" status.

61. Through this policy the Board of Education and FCPS is prejudging parents to be unqualified to make decisions regarding their child's confused gender identity, in violation of the law of the land and the civil rights of Plaintiffs. FCPS justification for keeping this information from parents is "safety".
62. The anxiety, stress and embarrassment minor Plaintiff feels as a direct result of Defendants' practice and policies has caused her to refrain from using female locker rooms and bath facilities as much as possible, and is a constant point of stress and distraction while she is at school trying to pursue her education, including during instructional time.
63. Mary Smith feels shamed by the Board of Education as if she is a bad person for simply being a woman who is caring and compassionate but does not agree with undressing or voiding her bladder in front of males, and as such has had her privacy violated and invaded by the Defendants.
64. On August 9, 2017 Chief of Staff of the FCPS and FCPS counsel and lawyer Jamie Cannon, Esq. stated in response to questioning on this Policy 443 and implementing regulations that parents will only be notified once and if the school deems the child to be on a "suicide watch" or similar comments, stating that the school "transfers liability back to the parents" only upon

a designation of medical issues, and “Transgenderism” would not apply, or similar words.

65. On August 9, 2017 other Board of Education members, including Jamie Cannon, Esq., stated that the information of a child’s “transitioning” to transgender will be withheld from parents under Policy 443 because “kids are many times scared of parents being upset or disciplining them because of their choices” or similar words.
66. On August 9, 2017 other Board of Education members, including Vice President Liz Barrett, stated that the Policy 443 is required in order to comply with “state law”, but claims “COMAR” and “state regulations”, and “400-20 and FERPA”, requires no-parental disclosure.
67. On August 9, 2017 Board of Education members, including Vice President Liz Barrett and Joy Schaefer, stated “our reasons for not informing parents is because if we do a lot [sic] of students will not come to us for help [sic]”. “Their kid doesn’t feel safe talking to the child’s parents, and that doesn’t mean the child isn’t safe at home, that’s just a natural part of adolescence, and there is a sensitivity for that.”
68. On August 9, 2017 Board of Education member and Vice President Liz Barrett stated that “it wouldn’t matter if the student was transgender or non-binary, other students may have fears of parents and we need to consider when to [not contact parents] and call 9-1-1...” or similar words.
69. On August 9, 2017 Board of Education members asserted that the Policy 443 complies with “FERPA and state law” to “Respect parental rights” because “they have to, it is the law” so the second paragraph says what you want to protect parents, but not as strongly as [some parents] want” because “personal information about transgender and gender-non-conforming students” is “not to be shared with parents”... “if there is a health or safety concern”. But other Board of Education members stated they want the policy to say “at all times, but especially if there is a

health or safety concern...because we must welcome and affirm all students for who they are...”.

70. On August 9, 2017 Board of Education President Brad Young proposed that the policy 443 be changed to say “parents will be contacted if there is a health or safety concern” to which the Board of Education appeared to unanimously, with counsel of Jamie Cannon, Esq., approve of that change. This change was modified to allow no-parental contact or report when there is **no** health or safety concern, under color and pretense of state law violating Plaintiff’s fundamental parental rights.
71. On August 9, 2017 the Board of Education, Vice President Liz Barrett, stated in public meeting that accommodations for parents who do not wish their daughter to be housed on field trips with a transgender male 1) may not be told about the concern, and 2) if they do know, may not be allowed to change rooms, stating that “some kids don’t have to go on field trips if the parents don’t want them to because we can’t address every problem in the school system” and if you don’t like it, “good grief, call the supervisor...” or similar words.
72. Defendants’ policies, regulations and actions, including but not limited to Policy 437 (“bullying”) and 443 (“transgender students”) and its related regulations are forcing Plaintiff Mary Smith and students and parents to use the gender pronouns that the school or a fellow student demands, regardless of the actual sex of the student, all on pain of reporting for bullying, and mistreatment by discipline and retaliation permanently noted in the school records of the student against any offending student, by government school staff.
73. On May 30, 2017 Board of Education Vice President Liz Barrett, a “gender identity” activist who was the primary sponsor of and, on information and belief, internal lobbyist for Policy 443, wrote an e-mail response to Plaintiff Jane Doe addressing Plaintiff’s concerns and