

Congress of the United States

Washington, D.C. 20515

February 3, 2022

The Honorable Miguel Cardona
Secretary of Education
400 Maryland Avenue, SE
Washington, D.C. 20202

Dear Secretary Cardona,

Last week, a horrifying story came to light of a 12-year-old child attempting suicide on her public-school campus in Clay County, Florida.¹ According to the girl's father, the school had been in conversations with the girl about a gender transition, had begun calling her a boy, and had assigned her a new name. They did all of this without notifying the parents. Unfortunately, these decisions by the school district are part of a disturbing trend.²

In light of school districts' proliferating efforts to conceal vital information from parents about minor children, we write to urge you to clarify the requirements of Title IX of the *Education Amendments of 1972* (Title IX) and the *Family Educational Rights and Privacy Act* (FERPA) with respect to these policies. First, with respect to Title IX, on June 22, 2021, the Department of Education (Department) published in the Federal Register an interpretation of Title IX in light of the Supreme Court's decision in *Bostock v. Clayton County* (Bostock).³ This interpretation states that Title IX's prohibition against discrimination on the basis of sex includes discrimination on the basis of sexual orientation and gender identity.⁴ However, the interpretation does not further discuss the potential implications of the Department's decision.

We believe it is critical that the Department quickly clarify those implications. For example, we are concerned the Department may support the actions of Clay County, Florida to conceal critical information from parents. Not only that, we are concerned the Department may believe such policies are required under Title IX. In 2016, the Obama administration issued guidance in which the Department and the Department of Justice jointly stated their belief that Title IX applies to sexual orientation and gender identity.⁵ That guidance document included the following:

“A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, **parents**, or community members raise objections or concerns.” [emphasis added]

¹ <https://www.actionnewsjax.com/news/local/lawsuit-claims-clay-county-schools-withheld-information-about-childs-well-being/EY5EPAL4RFAIPHAJTMWPT722WQ/>

² <https://www.dailysignal.com/2021/03/24/school-districts-are-hiding-information-about-gender-transitioning-children-from-their-parents-this-is-unconstitutional/>

³ <https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-13058.pdf>

⁴ The point of our letter is not to contest this interpretation, but we note that this interpretation ignores the clear statement from the Court in *Bostock* that the decision should not be applied to Title IX or other laws.

⁵ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

The Obama administration apparently believed that a school district that notified parents of a minor child's desire to change genders would be in violation of Title IX. The Biden administration must clarify its interpretation immediately.

Second, FERPA states the following:

“No funds shall be made available under any applicable program to any educational agency or institution **which has a policy of denying, or which effectively prevents,** the parents of students...the right to inspect and review the education records of their children.” [emphasis added]⁶

Actively concealing vital health information from parents “effectively prevents” parents from accessing information to which they are entitled. Again, the Department must clarify this point for states and schools and must immediately investigate any schools that are not in compliance with the requirements under FERPA.

To help Congress and the public better understand the Department's current interpretations of these federal laws, we request answers to the following questions within two weeks of the date of this letter.

1. Does the Department's interpretation of Title IX require school districts to conceal from a minor child's parents information about that child's interest in a gender transition? If the answer to that question is fact-specific, under what circumstances does Title IX permit a school district to discuss a minor child's interest in a gender transition with that child's parents?
2. If a school district is aware that a minor child is at risk of harming himself or herself, or others, due to issues related to the child's sexual orientation or gender identity, and chooses not to disclose that information to the child's parents, would the school district be in violation of Title IX?
3. When the student's education record includes information regarding issues of gender identity, does FERPA permit school districts to conceal that information from that child's parents?
4. Does the Department see any tension between the Department's interpretations of Title IX and FERPA under these discussed circumstances?
5. Does the Department believe that school personnel should practice other forms of medical or psychological treatment without appropriate licensure or training?
6. What other medical or psychological treatments does the Department believe that school personnel should provide to minor children without parental consent?

⁶ §444(a)(1)(A) of the *General Education Provisions Act*

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7. Does the Department support the actions of the Clay County, Florida school district in the actions discussed above?

Please provide answers to these questions in writing and deliver them to Mandy Schaumburg at mandy.schaumburg@mail.house.gov and Sandra Sawan Lara at Sandra_SawanLara@help.senate.gov.

If you have any questions about this request, please reach out to Mandy and Sandra.

Thank you for your prompt attention to this matter.

Sincerely,



Virginia Foxx
Ranking Member
U.S. House Committee on Education and Labor



Richard Burr
Ranking Member
U.S. Senate Committee on Health,
Education and Pensions