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June 8, 2023

Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Secretary Cardona:

We write to express our deep concern about recent reports that a Sun Prairie East High School (Sun Prairie, WI) male, claiming to be a female, showered and exposed himself to four freshmen women in a high school female locker room. As set forth further below, we write to request the Office for Civil Rights open an investigation into the incident or conduct a compliance review of the Sun Prairie Area School District.

By way of background, upon completion of their physical education swim class on March 3, 2023, four freshmen women proceeded to the women's locker room to rinse off and change.¹ As they entered the locker room, they saw a high school male who was not a part of the first hour physical education swim class in the bench area of the locker room.² The young women had a sense that the male identified as transgender and had previously used women's bathrooms.³ Though the women were uncomfortable, they proceeded to shower, fully clothed with their swimsuits, without interacting with the other student.⁴ At or about the same time, the male student approached them and announced he was transsexual and proceeded to undress and shower naked next to one of the young women.⁵ Though the student was initially facing away from the women, he turned toward them and exposed his male genitalia to all four of them.⁶ The young women quickly departed from the shower area.⁷

¹ Exhibit A, Letter of April 19, 2023, from the Wisconsin Institute for Law & Liberty, Inc. to Sun Prairie Area School District at 1, 2 ("Letter").

² *Id.*

³ *Id.*

⁴ Letter at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Unsure what to do next, one of the young women shared the incident with another student, who later reported the alleged sexual harassment to the associate principal of the high school.⁸ Instead of reporting the incident to the Title IX coordinator as the facts warranted,⁹ the associate principal asked for the names of the students.¹⁰

A few days later, a parent of one of the young women wrote to the senior principal at the high school, stating her concerns and inquiring about any actions the school had taken or might be taking.¹¹ The senior principal responded by calling and apologizing, made a reference to school district policies, and indicated she would speak to school district staff who knew the details.¹² No policy was identified nor was Title IX mentioned.¹³ Another parent also reached out to the senior principal, but according to reports, no Title IX policies or procedures were mentioned, nor were any steps the high school had taken to address the matter.¹⁴

It was not until over a month after the incident that a meeting took place with the parents of one of the young women.¹⁵ That meeting proved unsatisfactory and failed to provide parents with answers.¹⁶ No indication was given that the school district intended to address the incident or change any policies.¹⁷

In short, it is unclear whether written Title IX policies and procedures were in place at the time of the incident, and if so, whether they were well publicized. There is confusion and uncertainty at every point: whether the associate principal contacted the Title IX coordinator; if she did so, whether this was done in a timely manner; whether a Title IX investigation was opened by the Title IX coordinator or any other administrator; if so, whether it was done in a timely way; whether the school district made any accommodation for the young women; and whether any Title IX interviews were conducted of the women students, the male student, other witnesses, or the parents.

While it remains unclear whether any Title IX investigation was initiated - even where clearly warranted by the facts - it is clear the school took some action following the incident. On April 10, the senior principal emailed one of the parents a one-page guidance document titled “Restroom and Locker Room Accessibility Guidance” (“Guidance”).¹⁸ The Guidance allows male students to use and shower in the women’s locker room, with no regard for the privacy of young women:

⁸ *Id.*

⁹ *See* Title IX of the Education Amendments of 1972; 34 C.F.R. § 106.8 (a) (designation and role of Title IX coordinator).

¹⁰ Letter at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Letter at 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Exhibit B, Restroom and Locker Room Accessibility Guidance, Sun Prairie Area School District, Sun Prairie, WI.

A student who is transgender, nonbinary, or gender expansive will be permitted to access the men's/women's segregated restrooms in accordance with the student's gender identity that the student regularly asserts at school and in other social environments. Any student who has a need or desire for increased privacy, regardless of the underlying reason, may be provided with access to a single-access restroom where such a facility is reasonably available, but no student shall be required to use such a restroom because of the student's transgender, nonbinary, or gender expansive status.¹⁹

Further, there is no indication the Guidance was ever in effect or approved by the school board.²⁰ Based upon the text of the Guidance (i.e., it permitted the male student to access the women's locker room), it certainly appears to be based on the Department's misguided interpretation of *Bostock v. Clayton County*, which held that an employer who fires someone for being transgender violates Title VII of the *Civil Rights Act*.²¹ The Department's interpretation erroneously extended the holding of *Bostock* to Title IX, notwithstanding *Bostock* expressly limited its applicability to Title VII:

The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And under Title VII itself, they say sex segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind. The only question before us is whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual 'because of such individual's sex.'²²

We, and others on the Committee on Education and the Workforce, have repeatedly raised substantial concerns about the Department's post-*Bostock* interpretation of Title IX.²³ We do so again with this letter. In short, the Department's interpretation continues to endanger women by putting their rights and needs second to the political agenda of the Biden administration.

The Office for Civil Rights has full authority under 34 CFR § 100.7(a) and (c) to conduct on its own initiative a Title IX investigation or a compliance review of the Sun Prairie Area School

¹⁹ *Id.*

²⁰ There appears to be no public-facing web-based information to indicate whether the guidance was in place on March 3, 2023, or whether it was approved by the Sun Prairie Area School District's governing board.

²¹ See *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020) and Department of Education interpretation at <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf>.

²² 140 S. Ct. in 1753.

²³ We wrote to you on October 18, 2021, and to Assistant Secretary for Civil Rights Catherine Lhamon on March 23, 2023 concerning the very serious and adverse consequences of the administration's flawed Title IX interpretation in Loudoun County, Virginia; see 86 Fed. Reg. 32637 (June 22, 2021) (Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*). The Committee on Education and the Workforce raised similar concerns with you at our hearing on the policies and priorities of the Department on May 16, 2023.

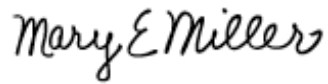
District. We urge you, in the strongest possible terms, to initiate an investigation or compliance review.

We look forward to receiving a response to our request no later than two weeks from the date of this letter.

Sincerely,

A handwritten signature in blue ink that reads "Virginia Foxx".

Virginia Foxx
Chairwoman
U.S. House Committee on Education &
the Workforce

A handwritten signature in black ink that reads "Mary E. Miller".

Mary Miller
Member of Congress