

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Case No. 1:26-cv-00752

**MARY DOE, by and through her mother)
and next friend, JANE DOE, BETH ROE,)
by and through her mother and next)
friend, ALICE ROE, DIANE POE, by and)
through her mother and next friend)
CAROL POE,)**

Plaintiffs,

v.

**CABARRUS COUNTY BOARD OF)
EDUCATION and DR. JOHN KOPICKI,)
in his official capacity as Superintendent of)
Cabarrus County Schools,)**

Defendants.

**DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' AMENDED
COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rules 7.2 and 7.3, Defendants Cabarrus County Board of Education (the "Board") and Dr. John Kopicki, in his official capacity as Superintendent of Cabarrus County Schools, move to dismiss Plaintiffs' Amended Complaint (Dkt. 15).

As explained in the accompanying Memorandum in Support, Count I fails to state a claim under Title IX. Plaintiffs do not allege that the Board denied them access to any facility because of their sex, and their allegations establish, at most, a disparate impact that is not actionable through Title IX's implied private right of action. Title IX does not create a freestanding privacy cause of action or a right to exclude transgender students from sex-separated facilities. Plaintiffs also allege neither actionable student-on-student harassment nor deliberate indifference. Instead, their allegations establish that Defendants attempted to comply with controlling Fourth Circuit law,

addressed individual circumstances, and offered additional privacy measures. Furthermore, the absence of clear notice independently precludes retrospective monetary liability under Title IX.

Counts II and IV likewise fail. Plaintiffs do not allege that Defendants treated them less favorably than similarly situated students or acted with a discriminatory purpose. Even if the challenged approach constitutes a sex-based classification, the allegations establish that it was substantially related to the important governmental objective of complying with controlling federal law. Count IV does not state an independent cause of action under *Monell*, and Plaintiffs allege neither an underlying constitutional violation nor facts identifying a Board policy, final policymaker decision, widespread custom, or deliberately indifferent training deficiency.

Count III fails because Plaintiffs do not allege unequal treatment or discriminatory purpose under Article I, Section 19 of the North Carolina Constitution. Plaintiffs' theory also conflicts with N.C. Gen. Stat. § 143-761, which preempts local boards of education from independently regulating access to multiple-occupancy restrooms, showers, or changing facilities except in accordance with an act of the General Assembly. Finally, because Dr. Kopicki is sued only in his official capacity, the claims against him duplicate the claims against the Board.

Defendants respectfully request that the Court dismiss Counts I, II, and IV with prejudice. The Court also should dismiss Count III with prejudice for failure to state a claim or, alternatively, decline to exercise supplemental jurisdiction over Count III and dismiss it without prejudice. The Court should dismiss Dr. Kopicki as a duplicative Defendant. Defendants respectfully request this Court resolve this Motion prior to Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted, this the 11th day of September 2026.

CAMPBELL SHATLEY, PLLC

s/ Ashley F. Leonard
Ashley F. Leonard

NC State Bar No. 56205
674 Merrimon Ave., Suite 210
Asheville, NC 28804
(828) 398.2776
(828) 398.2795 *fax*
ashley@csedlaw.com

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing *Defendants' Motion to Dismiss Plaintiffs' Amended Complaint* in the above-entitled action upon all parties to this cause via CM/ECF electronic copy or by depositing a copy hereof in a postage paid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the parties as listed:

Rachael Tucker Wyrick
Julius I. Kairey
Consovoy McCarthy PLLC
rachael@consovoymccarthy.com
julius@consovoymccarthy.com

Laura Stell
Ian D. Prior
Crystal Clanton
Rachael Griffin
America First Legal Foundation
laura.stell@aflegal.org
ian.prior@aflegal.org
crystal.clanton@aflegal.org
rachael.griffin@aflegal.org

This the 11th day of September 2026.

s/ Ashley F. Leonard
Ashley F. Leonard