

**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' MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS
PLAINTIFFS' AMENDED
COMPLAINT**

NATURE OF THE MATTER

Plaintiffs' concerns about privacy and personal dignity deserve respectful consideration. The question presented by Defendants' Motion, however, is whether the allegations in the Amended Complaint state a claim under Title IX or the federal or North Carolina constitutions. They do not. The Amended Complaint does not establish that Defendants discriminated against Plaintiffs because they are female. Plaintiffs were not denied access to female facilities. Instead, they challenge Defendants' decision to permit a transgender student at one high school to use facilities consistent with their gender identity while offering private alternatives to students seeking additional privacy.

The Amended Complaint establishes that Defendants acted to comply with controlling Fourth Circuit law, considered individual circumstances, and attempted to address the concerns of

affected students. Title IX does not create a freestanding right to exclude transgender students from school facilities, permit recovery based on disparate impact, or impose monetary liability without the clear notice required of Spending Clause legislation. Plaintiffs likewise allege neither unequal treatment nor discriminatory purpose sufficient to support their federal or state equal protection claims.

The remaining claims have independent defects. Plaintiffs do not allege an underlying constitutional violation or facts identifying a policy or custom attributable to the Board. North Carolina law also preempts the Board from independently adopting the facility-access regulation Plaintiffs demand. Finally, the claims against the Superintendent in his official capacity duplicate the claims against the Board. The Amended Complaint should therefore be dismissed.

RELEVANT FACTUAL ALLEGATIONS¹

Plaintiffs are three female students at Cox Mill High School who allege they encountered transgender students in female-designated restrooms, locker rooms, or changing areas. (Dkt. 15 at ¶¶21-75). Mary alleges she encountered a transgender student in a school restroom on three occasions during the 2025-2026 school year and thereafter avoided using school restrooms when possible. *Id.* at ¶¶28, 33-34. After Mary raised her concerns, school administrators offered her access to staff restrooms and proposed excusing any resulting tardiness. *Id.* at ¶¶29-30, 36.

Beth alleges she encountered a transgender student in her team's changing area in April 2025. *Id.* at ¶46. She changed in a nearby restroom and later continued using a single-stall restroom rather than the team changing area. *Id.* at ¶¶47, 50. Diane alleges she encountered a transgender student in female-designated locker rooms during the 2024-2025 and 2025-2026

¹ The following allegations are taken from the Amended Complaint and are assumed true solely for purposes of Defendants' Motion to Dismiss.

school years and in a restroom during the 2025-2026 school year. (Dkt. 15 at ¶¶59, 69, 71). Diane did not raise her concerns with administrators because teammates reported that a coach had said students who disagreed with transgender participation should quit the team. *Id.* at ¶¶67, 72-73. The Amended Complaint does not allege any transgender student engaged in sexual conduct, threats, voyeurism, or other misconduct toward Plaintiffs. Plaintiffs' alleged injuries arise from the students' presence and use of the facilities.

The Amended Complaint characterizes the challenged approach as a district-wide "policy and practice" and alleges, upon information and belief, that district officials implement it uniformly. *Id.* at ¶76. At the same time, Plaintiffs quote the district's public statement that it "does not have a specific policy regarding this matter." *Id.* at ¶79. They also quote the Board's attorney as explaining that the district understood controlling Fourth Circuit law to require gender identity-consistent restroom access; private facilities were available; in these rare circumstances matters were addressed at each school on a case-by-case basis; and the Board monitored developments in the law. *Id.* at ¶80. The Amended Complaint alleges the district maintained its approach because it believed controlling law left it no alternative. (Dkt. 15 at ¶82).

All encounters and administrative responses alleged in the Amended Complaint occurred at Cox Mill High School. Plaintiffs identify no incident at another school and no vote, resolution, regulation, or directive through which the Board adopted the challenged approach. They allege Superintendent Kopicki is responsible for adopting and implementing the district's policies and practices, but they sue him only in his official capacity. *Id.* at ¶20. Count I asserts a Title IX claim against the Board. Counts II and III assert federal and state equal protection claims against the Board and Dr. Kopicki in his official capacity. Count IV is styled as a separate claim for municipal liability under *Monell*. Plaintiffs seek declaratory and injunctive relief requiring Defendants to

exclude transgender students from restrooms, locker rooms, and changing facilities inconsistent with their biological sex, together with nominal and compensatory damages for their emotional and dignitary injuries. *Id.* at 35–36.

QUESTIONS PRESENTED

1. Whether Plaintiffs state a Title IX claim when they were not denied access to female facilities, their asserted privacy concerns do not constitute intentional sex discrimination or actionable harassment, and the alleged response reflects adherence to controlling law rather than deliberate indifference.

2. Whether Plaintiffs state a federal equal protection claim when they do not allege less favorable treatment than similarly situated students or a discriminatory purpose, and the challenged approach was maintained to comply with controlling federal law.

3. Whether Count IV states a claim when *Monell* creates no independent cause of action and Plaintiffs allege neither an underlying constitutional violation nor facts identifying a Board policy, final policymaker decision, widespread custom, or deliberately indifferent training deficiency.

4. Whether Plaintiffs state a direct claim under Article I, Section 19 of the North Carolina Constitution when they allege neither unequal treatment nor discriminatory purpose, and state law preempts the Board from independently adopting the facility access regulation Plaintiffs demand.

5. Whether the claims against Dr. Kopicki should be dismissed because he is sued only in his official capacity and the Board is already a Defendant.

STANDARD OF REVIEW

A Rule 12(b)(6) motion tests legal sufficiency. The Court accepts well-pleaded facts, not legal conclusions, and asks whether the facts plausibly state a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–57 (2007). The Court may consider the Amended Complaint, documents integral to it, and matters of public record. *Goines v. Valley Community Services Board*, 822 F.3d 159, 166–67 (4th Cir. 2016).

ARGUMENT

I. Plaintiffs fail to state a Title IX claim because they allege neither sex-based discrimination nor deliberate indifference, and Title IX does not create a freestanding right to exclude transgender students from sex-separated facilities.

A. Plaintiffs do not allege intentional discrimination based on sex.

Count I fails because Plaintiffs do not allege that Defendants denied them access to any facility because of their sex. Instead, Plaintiffs challenge Defendants' alleged practice of allowing students to use facilities consistent with their gender identity. That practice does not treat Plaintiffs less favorably than similarly situated students, and Plaintiffs' allegations of a disproportionate effect on female students do not support a private claim under Title IX.

Title IX prohibits a recipient of federal funds from excluding a person from participation in, denying a person the benefits of, or subjecting a person to discrimination "on the basis of sex." 20 U.S.C. § 1681(a). A private plaintiff therefore must allege discrimination that occurred because of sex. *See Sheppard v. Visitors of Va. State Univ.*, 993 F.3d 230, 236-37 (4th Cir. 2021). If liability is based on a recipient's response to misconduct committed by someone else, the plaintiff also must satisfy the "actual notice" and "deliberate indifference" requirements established in *Gebser* and *Davis*. *Davis v. Monroe County Board of Education*, 526 U.S. 629, 640-43 (1999); *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 290-91 (1998).

Plaintiffs do not allege that Defendants prohibited them from using female-designated facilities. To the contrary, Plaintiffs allege students may use facilities consistent with their gender identity and acknowledge that Plaintiffs, who identify as female, may use the female-designated facilities. (Dkt. 15 at ¶¶76, 91-92). The challenged criterion is gender identity, and Plaintiffs do not identify any similarly situated male student who received more favorable treatment under that criterion.

Plaintiffs instead allege Defendants' practice presently affects female students more frequently because no transgender male student currently uses the boys' facilities. *Id.* at ¶¶76, 117. At most, that allegation describes a disparate impact. Title IX's implied private right of action does not extend to disparate impact claims. *See Alexander v. Sandoval*, 532 U.S. 275, 280-93 (2001) (holding there is no private right to enforce disparate impact regulations under materially identical Title VI language); *Cannon v. University of Chicago*, 441 U.S. 677, 694-96 (1979) (explaining that Title IX was patterned after Title VI); *see also Doe v. Rector & Visitors of George Mason Univ.*, 132 F. Supp. 3d 712, 732 (E.D. Va. 2015) (applying *Alexander* and dismissing with prejudice a disparate impact claim under Title IX). Because Plaintiffs allege neither differential treatment nor intentional discrimination based on their sex, Count I fails to state a claim.

B. Title IX does not protect Plaintiffs' asserted privacy interest.

Title IX also does not create a freestanding right to exclude transgender students from restrooms, locker rooms, or changing facilities. Title IX is an antidiscrimination statute. Its operative text does not guarantee students access to facilities from which every person of the opposite biological sex is excluded. Nor does 34 C.F.R. § 106.33 create such an entitlement. The regulation provides that a recipient "may provide separate toilet, locker room, and shower facilities on the basis of sex." 34 C.F.R. § 106.33. It authorizes recipients to provide separate facilities; it does not require them to do so or create a privately enforceable right to determine which facility another student may use. *See Alexander*, 532 U.S. at 286-93; *see also Parents for Privacy v. Barr*, 949 F.3d 1210, 1227 (9th Cir. 2020) (recognizing that "Title IX . . . does not create distinct 'bodily privacy rights' that may be vindicated through suit."). This Court's decision in *Carcano v. McCrory*, 203 F. Supp. 3d 615 (M.D.N.C. 2016), confirms that § 106.33 authorizes, but does not require, sex-separated facilities and that the regulation must be applied consistently with

controlling Fourth Circuit authority governing transgender students' restroom access. *Id.* at 626-29, 637. More recently, a different federal court reached the same conclusion under materially similar circumstances in *F.F. v. Valley View Community Unit School District 365U*. There, a female student challenged a school district's practice of allowing transgender students to use facilities consistent with their gender identity. Like Plaintiffs here, the student alleged the practice compromised her privacy and required her to use less convenient alternative facilities. No. 1:25-CV-09112, 2026 U.S. Dist. LEXIS 300899 (N.D. Ill. July 13, 2026). The *F.F.* court dismissed the Title IX claim because the challenged practice did not treat the plaintiff differently based on sex and because her privacy concerns did not establish actionable discrimination. *Id.* at *14-15, 18-21. Plaintiffs' privacy concerns may be sincere, but they do not establish that Defendants discriminated against them on the basis of sex.

C. Plaintiffs' theory conflicts with *Grimm*, which governed Defendants' conduct during the 2025-2026 school year.

Controlling Fourth Circuit law independently forecloses Plaintiffs' contention that Defendants violated Title IX by declining to exclude transgender students. The *Grimm v. Gloucester Cty. Sch. Bd.* court held that a school board violated Title IX by requiring a transgender boy to use restrooms corresponding to biological sex rather than gender identity. 972 F.3d 586, 618-19 (4th Cir. 2020). In August 2025, the Fourth Circuit relied on *Grimm* in concluding that a transgender student was likely to succeed on a Title IX challenge to a biological sex-only restroom restriction. *Doe v. South Carolina*, No. 25-1787, 2025 U.S. App. LEXIS 20849, at *20-21 (4th Cir. Aug. 15, 2025). Likewise, the conduct challenged in the Amended Complaint occurred during the 2025-2026 school year, when *Grimm* governed transgender students' restroom access in this Circuit. *West Virginia v. B.P.J.*, 146 S. Ct. 2356 (2026), was not decided until June 30, 2026, and addressed the distinct statutory and factual context of sex-separated athletics. Its reasoning rests

on considerations specific to competitive sports; it did not address students' access to restrooms, locker rooms, or changing facilities. *See B.P.J.*, slip op. at 8-14, 29.

An intervening Supreme Court decision displaces circuit precedent only when the two decisions are irreconcilable. *See United States v. Hunt*, 123 F.4th 697, 702 (4th Cir. 2024). *B.P.J.*'s athletics-specific holding is not irreconcilable with *Grimm*'s restroom access holding. Accordingly, neither the Board nor this Court may treat *Grimm* as implicitly overruled merely because Plaintiffs believe *B.P.J.*'s reasoning may eventually be extended beyond athletics. Plaintiffs thus seek to impose damages on Defendants for following controlling Fourth Circuit law during the 2025-2026 school year. They also ask this Court to require the Board to adopt the same biological sex-only restroom access rule that *Grimm* holds unlawful. Title IX does not support either form of relief.

D. The absence of clear notice independently precludes retrospective monetary liability.

Spending Clause principles provide an additional reason to dismiss Plaintiffs' claim for damages. Because Title IX conditions the receipt of federal funds, a recipient may be subjected to monetary liability only for conduct that it had clear notice was prohibited. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 24-25 (1981); *Davis*, 526 U.S. at 640-43; *Gebser*, 524 U.S. at 287. Applying that requirement, *United States v. Cal. Interscholastic Fed'n* dismissed Title IX claims challenging rules that permitted transgender girls to participate on girls' athletic teams and use athletic facilities consistent with their gender identity. Case No. 8:25-CV-01485, 2026 U.S. Dist. LEXIS 199493 (C.D. Cal. Aug. 31, 2026). The federal court held that even if Title IX required athletic eligibility and facility access based on biological sex, the educational institution lacked clear notice of that asserted funding condition. *Id.* The same reasoning applies here. No statutory text, regulation, or binding precedent notified the Board that following *Grimm* and

offering private alternatives to students seeking additional privacy constituted discrimination against those students. The governing Fourth Circuit authority indicated the opposite, and the Amended Complaint alleges that Defendants acted because they understood *Grimm* to control their conduct. (Dkt. 15 at ¶¶ 80, 82). Plaintiffs therefore cannot recover retroactive monetary relief based on a biological sex-only interpretation of Title IX that was not clearly established when the Board acted during the 2025-2026 school year.

E. Plaintiffs allege neither actionable student-on-student harassment nor deliberate indifference.

To the extent Plaintiffs attempt to impose liability based on alleged student-on-student harassment, that theory also fails. A funding recipient is liable for student-on-student harassment only when an "appropriate person" has "actual knowledge" of actionable harassment and responds with "deliberate indifference." *Davis*, 526 U.S. at 648-50. A response constitutes deliberate indifference only when it is "clearly unreasonable in light of known circumstances." *Id.* at 648. Courts may not second-guess a school's response merely because a plaintiff preferred a different remedy. *See S.B. v. Bd. of Educ.*, 819 F.3d 69, 77 (4th Cir. 2016).

The Amended Complaint's allegations negate deliberate indifference. The Board obtained legal advice, monitored developments in the law, addressed unusual circumstances individually, and sought to account for the concerns of all students. (Dkt. 15 at ¶80). School officials also offered Plaintiffs additional privacy measures, including access to staff or single-user restrooms and excused tardiness if the location of an alternative restroom delayed a student's arrival to class. *Id.* at ¶¶30, 36, 49-51. Plaintiffs may have preferred a different response, but disagreement does not establish deliberate indifference. *S.B.*, 819 F.3d at 77. Paragraph 82 further alleges Defendants maintained the challenged practice because they believed controlling law required it. (Dkt. 15 at ¶82). That allegation is inconsistent with the conclusory assertion that Defendants consciously

disregarded Plaintiffs' rights. *Doe No. 1 v. Bethel Local School District Board of Education* reinforces that conclusion. There, a school district allowed gender identity-consistent restroom access based on counsel's advice that Title IX required it and offered single-occupancy facilities to objecting students. Case No. 23-3740, 2025 U.S. App. LEXIS 22140 (6th Cir. Aug. 26, 2025). Although addressing a Free Exercise claim, the Sixth Circuit held that compliance with Title IX as then understood and the prevention of sex discrimination were legitimate purposes for the district's actions. *Id.* at *23. Here, the Amended Complaint likewise alleges Defendants believed controlling law required the challenged practice. (Dkt. 15 ¶82). Following binding precedent, consulting counsel, monitoring the law, and offering additional privacy measures is not a clearly unreasonable response. Count I therefore cannot proceed on a deliberate indifference theory.

Nor do Plaintiffs allege actionable student-on-student harassment. Such harassment must be based on sex and must be "so severe, pervasive, and objectively offensive" that it deprives the plaintiff of access to the educational opportunities or benefits provided by the school. *Davis*, 526 U.S. at 650. Plaintiffs allege the presence and ordinary use of school facilities by transgender students. They do not allege sexual conduct, threats, exposure, voyeurism, physical contact, or other misconduct by any transgender student. A student's ordinary use of a school facility for its intended purpose does not constitute actionable harassment. *See Parents for Privacy v. Barr*, 949 F.3d 1210, 1228-29 (9th Cir. 2020). Plaintiffs' discomfort and avoidance of certain facilities, though sincerely felt, do not transform another student's presence into severe, pervasive, and objectively offensive harassment under Title IX.

II. Plaintiffs fail to state a federal equal protection claim because they allege neither unequal treatment nor discriminatory purpose, and their privacy concerns do not establish an equal protection violation.

A. Plaintiffs do not allege that Defendants treated them differently because of their sex.

Plaintiffs' equal protection claim fails because the Amended Complaint does not identify any rule that treats Plaintiffs less favorably than similarly situated students because of their sex. Plaintiffs remain permitted to use the female-designated facilities, and the challenged practice applies the same access criterion to all students. The Equal Protection Clause provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. This language requires the government to treat similarly situated persons alike. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (superseded by statute on other grounds); *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001). To state an equal protection claim, a plaintiff must allege the government treated her differently from similarly situated persons and the unequal treatment resulted from intentional or purposeful discrimination. *Morrison*, 239 F.3d at 654; *see also Wilcox v. Lyons*, 970 F.3d 452, 462-63 (4th Cir. 2020).

A classification based on sex ordinarily receives intermediate scrutiny. Under that standard, the challenged classification must serve an important governmental objective, and the discriminatory means employed must be substantially related to achieving that objective. *United States v. Virginia*, 518 U.S. 515, 533 (1996). But heightened scrutiny does not eliminate the threshold requirement that a plaintiff identify differential treatment resulting from a governmental classification. *See Morrison*, 239 F.3d at 654. The policy at issue in *Peltier v. Charter Day School, Inc.* illustrates the differential treatment required to state such a claim. 37 F.4th 104 (4th Cir. 2022) (en banc). There, the school expressly required female students, but not male students, to wear skirts. *Id.* at 112, 125-26. The policy imposed a particular requirement on students because they were female and therefore treated otherwise similarly situated male and female students differently. *Id.* at 126. The Fourth Circuit accordingly subjected the policy to intermediate scrutiny. *Id.*

The Amended Complaint identifies no comparable distinction here. Plaintiffs do not allege they were prohibited from using female designated restrooms, locker rooms, or changing facilities because they are female. To the contrary, Plaintiffs acknowledge they may use those facilities. (Dkt. 15 at ¶¶92-96, 108-14). They allege Defendants permit students to use facilities consistent with their gender identity. *Id.* at ¶¶76, 91, 107. Under that criterion, Plaintiffs, who identify as female, may use the female designated facilities, just as other students who identify as female may do. The challenged practice therefore does not impose one access rule on Plaintiffs and a different rule on similarly situated students. Furthermore, offering private facilities to students who express discomfort is an additional accommodation, not a restriction on Plaintiffs' continued access to female-designated facilities. The option does not become adverse treatment because Plaintiffs believe another student should be required to use it. Plaintiffs therefore have not alleged Defendants subjected them to differential treatment because of their sex. Without that threshold showing, Count II fails to state an equal protection claim.

B. The Amended Complaint does not plausibly allege that Defendants acted with a discriminatory purpose.

Count II also fails because the Amended Complaint does not allege facts supporting a reasonable inference that Defendants acted for the purpose of disadvantaging female students. Instead, Plaintiffs' own allegations establish Defendants acted to comply with controlling Fourth Circuit law while attempting to address the privacy concerns raised by individual students. Discriminatory purpose is a necessary element of an equal protection claim. *Washington v. Davis*, 426 U.S. 229, 240 (1976); *Wilcox*, 970 F.3d at 462-63. A rule does not violate equal protection merely because it affects one group more frequently or more substantially than another. *Washington*, 426 U.S. at 242. Rather, the plaintiff must allege the government adopted or maintained the challenged practice "'because of,' not merely 'in spite of,' its adverse effects upon

an identifiable group." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Thus, even a foreseeable disparate impact does not establish discriminatory purpose without facts showing the government intended to produce that result. *Id.* at 278-79. In *Coalition for TJ v. Fairfax County School Board*, for example, the Fourth Circuit explained that intentional discrimination requires more than knowledge that government action may produce unequal consequences. 68 F.4th 864, 883 (4th Cir. 2023). The Equal Protection Clause is concerned with governmental decisions made for a discriminatory reason, not every decision that produces a differential effect. *Id.* A plaintiff therefore cannot state an equal protection claim by alleging impact alone. *Id.*

Plaintiffs allege no transgender male student presently uses the male designated facilities and the challenged practice therefore affects female students more frequently. (Dkt. 15 at ¶¶76, 117). Even accepting that allegation, it shows only the present effect of the practice. It does not show Defendants adopted or maintained the practice for the purpose of burdening female students. The remaining allegations affirmatively undermine any inference of discriminatory purpose. According to the Amended Complaint, Defendants believed *Grimm v. Gloucester County School Board* required them to permit transgender students to use restrooms consistent with their gender identity. (Dkt. 15 at ¶¶80, 82). The Board's attorney publicly explained that the district addressed the uncommon circumstances involving transgender students on a case-by-case basis; attempted to protect the rights, safety, and privacy of all students; monitored developments in the law; and would revise its approach if the governing law changed. *Id.* at ¶80. School administrators also offered Plaintiffs access to private facilities in response to their concerns. *Id.* at ¶¶30, 36, 49-51. Those allegations describe an effort to comply with controlling law and balance competing student interests, not an intent to disadvantage Plaintiffs because they are female. Because Plaintiffs have not plausibly alleged discriminatory purpose, Count II should be dismissed.

C. Even if the challenged practice constitutes a sex-based classification, it satisfies intermediate scrutiny.

Even if the Court concludes the challenged practice classifies students based on sex, the Amended Complaint establishes the practice is substantially related to an important governmental objective. Defendants sought to comply with controlling constitutional and statutory requirements while addressing the privacy concerns of other students through individualized accommodations.

A sex-based classification is constitutional if it is substantially related to an important governmental objective. *Virginia*, 518 U.S. at 533. The justification must be genuine and must describe the actual objective served by the challenged action. *Id.* Compliance with federal constitutional and statutory requirements is an important governmental interest. Moreover, when controlling appellate precedent holds that a particular exclusion violates equal protection, a school district has a substantial interest in avoiding that constitutional violation.

In *Grimm*, the Fourth Circuit held that a school board violated the Equal Protection Clause by prohibiting a transgender boy from using the boys' restrooms and requiring him to use either the girls' restrooms or separate single-user facilities. 972 F.3d at 618-19. The Fourth Circuit applied intermediate scrutiny and concluded the exclusion was not substantially related to the school board's asserted privacy interest. *Id.* at 607. In August 2025, the Fourth Circuit again relied on *Grimm* when it granted interim relief permitting a transgender boy to use the boys' restrooms. *Doe v. South Carolina*, 2025 U.S. App. LEXIS 20849, at *20–21. These decisions constituted the legal framework governing Defendants' alleged practice. Allowing transgender students to use facilities consistent with their gender identity avoids the exclusion that *Grimm* held unconstitutional. At the same time, Defendants allegedly offered private alternatives to students who requested additional privacy and evaluated individual circumstances on a case-by-case basis. (Dkt. 15 at ¶¶30, 36, 49–51, 80). The Amended Complaint therefore establishes both the important

objective and the substantial relationship between that objective and the challenged practice. Plaintiffs cannot convert Defendants' compliance with *Grimm* into a separate equal protection violation. Even if the challenged practice is treated as a sex-based classification, it satisfies intermediate scrutiny as alleged in the Amended Complaint.

III. Plaintiffs fail to plead municipal liability because they allege neither an underlying constitutional violation nor a policy or custom attributable to the Board.

Count IV fails because *Monell* does not create an independent cause of action, and the Amended Complaint does not plausibly allege that a Board policy or custom caused a constitutional violation. Plaintiffs' conclusory references to a "district-wide practice," a "custom," and inadequate training cannot substitute for factual allegations.

A. *Monell* does not provide a standalone claim and cannot survive without an underlying constitutional violation.

Count IV fails at the threshold because *Monell* is a rule for attributing a constitutional violation to a local governmental entity, not a freestanding constitutional tort. A local governmental entity may be liable under 42 U.S.C. § 1983 only when its policy or custom causes the deprivation of a federal right. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694-95 (1978). Accordingly, municipal liability necessarily fails when the complaint does not plead an underlying constitutional violation. *Evans v. Chalmers*, 703 F.3d 636, 654 (4th Cir. 2012).

Here, Count IV does not identify a constitutional deprivation separate from the equal protection claim asserted in Count II. Instead, Plaintiffs allege the Board is responsible under *Monell* for the same facility access practices challenged in Count II. (Dkt. 15 at ¶¶133-40). Because Plaintiffs have not plausibly alleged those practices denied them equal protection, there is no underlying constitutional violation that may be attributed to the Board. Count IV therefore fails as an independent claim and should be dismissed.

B. The Amended Complaint does not plausibly identify an official Board policy, a final policymaker decision, or a persistent and widespread custom.

Even if Plaintiffs had pleaded an underlying constitutional violation, they have not plausibly alleged a policy or custom attributable to the Board caused it. A local governmental entity is liable under § 1983 only when an official policy or custom is the "moving force" behind the constitutional violation. *Monell*, 436 U.S. at 691, 694. The Fourth Circuit recognizes four means of establishing such a policy or custom: a written policy, a decision by an official with final policymaking authority, an omission manifesting deliberate indifference, or through a practice so persistent and widespread as to have the force of law. *Starbuck v. Williamsburg James City County School Board*, 28 F.4th 529, 533 (4th Cir. 2022). Whether an official possesses final policymaking authority is determined by state law. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986). In North Carolina, the local board of education, not the Superintendent, generally possesses final policymaking authority over the operation of the school system. *Love-Lane v. Martin*, 355 F.3d 766, 782 (4th Cir. 2004); N.C. Gen. Stat. §§ 115C-36, -40, -47. A practice not formally approved by the Board may constitute a custom, but only if it is sufficiently "persistent and widespread" to have the force of law. *Carter v. Morris*, 164 F.3d 215, 220 (4th Cir. 1999). Isolated incidents and conclusory descriptions of a practice are insufficient. *Id.*

The Amended Complaint does not identify any vote, resolution, regulation, directive, or other decision through which the Board adopted the challenged approach. To the contrary, Plaintiffs quote the Board's counsel as stating the district has no specific policy governing these uncommon circumstances and instead addresses them individually.² (Dkt. 15 at ¶¶79-80). Although the absence of a written policy is not dispositive, Plaintiffs also fail to allege facts

² The Board attorney's public explanation of the governing law does not constitute the adoption of a policy or a final policymaking decision by the Board.

showing an unwritten custom attributable to the Board. Their specific allegations concern encounters and administrative responses at one school. They identify no comparable incidents at other schools, no direction from the Board, and no facts showing the Board itself approved the challenged decisions.

The allegations that the practice was "district-wide," officials possessed policymaking authority, and a policy or custom caused Plaintiffs' injuries merely recite the elements of municipal liability. *See id.* at ¶¶76-77, 133-40. Those labels do not establish that the Board adopted a policy, delegated final policymaking authority, or acquiesced in conduct so persistent and widespread that it acquired the force of law. Because the pleaded facts do not connect the alleged conduct to a cognizable policy or custom of the Board, Plaintiffs have not stated a claim for municipal liability.

C. Plaintiffs do not plead a specific training deficiency, deliberate indifference, or causation.

Plaintiffs' alternative failure-to-train theory is equally deficient. A failure to train supports municipal liability only when the omission reflects deliberate indifference to constitutional rights and directly causes the alleged violation. *City of Canton v. Harris*, 489 U.S. 378, 388-89 (1989). Deliberate indifference ordinarily requires a pattern of similar constitutional violations that placed policymakers on notice that existing training was inadequate. *Connick v. Thompson*, 563 U.S. 51, 63 (2011). Without such a pattern, liability is available only in the narrow circumstance in which the need for particular training is so obvious that a constitutional violation is the highly predictable consequence of failing to provide it. *Id.* at 71.

The Amended Complaint identifies no particular training program, no subject on which employees received inadequate training, and no employee whose lack of training caused a constitutional violation. It likewise alleges no pattern of prior, similar constitutional violations that placed the Board on notice of a training deficiency. Plaintiffs instead allege school officials

consistently applied the district's understanding of controlling law and relied on legal guidance in addressing facility access. (Dkt. 15 at ¶¶76, 80, 82). Those allegations describe an intentional legal approach, not unconstitutional conduct caused by an employee's lack of training. Plaintiffs therefore have not pleaded an underlying constitutional violation, a policy or custom attributable to the Board, or a deliberately indifferent training deficiency that caused their alleged injuries. Count IV should be dismissed.

IV. Count III fails because Plaintiffs do not allege a violation of the North Carolina Constitution, and state law does not authorize the Board to adopt the rule Plaintiffs demand.

A. Plaintiffs do not plausibly allege a violation of Article I, Section 19 of the North Carolina Constitution.

Plaintiffs' state equal protection claim fails because they do not allege unequal treatment or intentional discrimination. Article I, Section 19 of the North Carolina Constitution provides: "[n]o person shall be denied the equal protection of the laws." N.C. Const. art. I, § 19. North Carolina courts generally apply the same standards used by federal courts when evaluating equal protection claims. *Blankenship v. Bartlett*, 363 N.C. 518, 521 (2009). The State Equal Protection Clause restrains governmental classifications that treat similarly situated persons differently or interfere with a legally recognized right. *Id.*

As explained with respect to Count II, Plaintiffs do not allege that Defendants denied them access to female facilities or afforded more favorable treatment to similarly situated students. Plaintiffs may use the facilities corresponding to their gender identity, as may every other student. The availability of an optional private facility does not become unequal treatment merely because Plaintiffs would prefer Defendants require another student to use it. Nor do Plaintiffs plausibly allege discriminatory purpose. The Amended Complaint alleges Defendants acted based on their understanding of controlling Fourth Circuit law and attempted to address the privacy concerns of

all students through private alternatives and individualized review. (Dkt. 15 at ¶¶80, 82). The allegation that the circumstances in a previous school year produced more encounters in girls' facilities than in boys' facilities describes, at most, a differential effect. It does not show Defendants adopted or maintained the challenged approach because of an intent to disadvantage female students. Because Plaintiffs allege neither unequal treatment nor discriminatory purpose, Count III does not state a violation of Article I, Section 19.

B. North Carolina law forecloses Plaintiffs' theory that the Board should have independently adopted the facility access regulation they demand.

Plaintiffs' theory also conflicts with the General Assembly's express limitation on the Board's regulatory authority. A local board of education possesses only the authority conferred upon it by the General Assembly. *See Schroeder v. City of Wilmington*, 282 N.C. App. 558, 559 (2022) (explaining that local governments "may exercise only those powers that our General Assembly 'deem[s] advisable' through legislative enactment."). When the General Assembly reserves regulatory authority to itself, a political subdivision may not exercise that authority independently. *See Town of Emerald Isle v. State*, 320 N.C. 640, 656-57 (1987).

The General Assembly has expressly addressed governmental regulation of access to multiple-occupancy restrooms, showers, and changing facilities. Section 143-761 provides:

State agencies, boards, offices, departments, institutions, branches of government, including The University of North Carolina and the North Carolina Community College System, and political subdivisions of the State, including local boards of education, are preempted from regulation of access to multiple occupancy restrooms, showers, or changing facilities, except in accordance with an act of the General Assembly.

N.C. Gen. Stat. § 143-761. The statute does not merely omit a grant of authority. It expressly identifies local boards of education and preempts them from regulating access to the facilities at issue unless acting in accordance with legislation enacted by the General Assembly.

Plaintiffs' theory nevertheless depends on the proposition that the Board should have adopted and enforced a biological sex-based facility access rule. Their requested injunction likewise would require the Board to impose that local rule. But Plaintiffs identify no act of the General Assembly authorizing the Board to regulate access in that manner. Section 143-761 therefore forecloses the premise that the Board had authority to adopt the rule whose absence allegedly violated Plaintiffs' rights. In the absence of unequal treatment or discriminatory purpose, Article I, Section 19 does not provide a basis for imposing liability on the Board for failing to take action that state law expressly places beyond its independent regulatory authority.

C. *Corum* does not create a claim where Plaintiffs have not alleged an underlying constitutional violation.

Plaintiffs cannot cure the substantive defects in Count III by invoking *Corum*. A direct claim under the North Carolina Constitution is available only when a plaintiff establishes both a violation of a state constitutional right and the absence of an adequate state remedy. *Corum v. Univ. of N.C.*, 330 N.C. 761, 782 (1992); *Taylor v. Wake Cnty.*, 258 N.C. App. 178, 183 (2018). Paragraph 130 of the Amended Complaint alleges Plaintiffs lack an adequate state remedy, but the absence of another remedy does not itself establish a constitutional violation. *Corum* recognizes a remedy for an actual violation of the North Carolina Constitution; it does not enlarge the substantive protections of Article I, Section 19; override § 143-761; or create liability for conduct that otherwise satisfies equal protection. Because Plaintiffs have not plausibly alleged unequal treatment or discriminatory purpose, there is no state constitutional violation for which a direct *Corum* remedy may be afforded. Count III therefore should be dismissed for failure to state a claim. Alternatively, if the Court does not dismiss Count III on the merits, the Court should decline supplemental jurisdiction after dismissing the federal claims pursuant to 28 U.S.C. § 1367(c)(3).

V. The official capacity claims against Dr. Kopicki are duplicative.

An official capacity suit is another way of pleading a claim against the governmental entity. *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). When the entity is already a defendant, parallel official capacity claims are duplicative and should be dismissed. *Love-Lane*, 355 F.3d at 783. Plaintiffs sue Dr. Kopicki only in his official capacity and seek the same relief from him and the Board. (Dkt. 15 at 1 (case caption), ¶20).

CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court grant their Motion and 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. Because Dr. Kopicki is sued only in his official capacity, the Court should dismiss him as a duplicative Defendant.

CERTIFICATE OF WORD COUNT

Pursuant to LR 7.3(d), counsel certifies that the body, headings, and footnotes of this brief contain 6,225 words, as calculated by the word processing software, and that this brief complies with the applicable 6,250-word limit.

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

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this *Defendants' Memorandum in Support of 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:

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