



**Board of Education of the City of Chicago
Law Department**

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Sent via E-mail

Craig W. Trainor
Acting Assistant Secretary
United States Department of Education
Office for Civil Rights
400 Maryland Ave SW
Washington, DC 20202-1100
craig.trainor@ed.gov

Re: OCR MSAP Letter District Response

Dear Acting Assistant Secretary Trainor,

This letter serves as the Chicago Public Schools' ("CPS" or "District") acknowledgement of receipt of the Department of Education's ("Department") September 16, 2025 letter regarding the CPS' Magnet School Assistance Program ("MSAP") grant funding and request for reconsideration of the Department's unexpected non-continuation determination. You claim the MSAP grant "is no longer in the best interest of the Federal Government." To be clear, it is CPS' legal and moral obligation to do what is in the best interest of Chicago's students. Our mission, programs, and policies not only meet our obligation to students, but they also plainly comply with the law.

The way in which the Department has chosen to handle this matter runs afoul of the Department's own well-established procedures and practices. Your letter indicates, without evidence, that the Department "has identified civil rights compliance issues," yet also admits "CPS *appears* to be discriminating based on race..." Such statements indicate the Department has made no such legal or factual findings, especially considering your letter provides no

evidence to support these claims, nor provides CPS with sufficient notice or due process. The Department's abrupt and arbitrary action raises significant concerns and will directly harm CPS students.

With three days' notice, your letter demands CPS take extreme measures to overhaul its programs, practices, and policies that impact thousands of CPS students and staff. Please be advised CPS will not consider taking those steps unless and until the Department provides the required due process it legally owes CPS. Rather, CPS objects to the basis of the Department's decision to not certify its MSAP grant for continuation because: (1) OCR has two pending investigations into the Black Students Success Plan and the *Guidelines Regarding the Support of Transgender and Gender Nonconforming Students*, and thus, the Department has not made any formal findings; (2) CPS' policies are in compliance with state and federal law; and (3) the Department has yet to articulate any, let alone a sufficient, nexus between the Black Student Success Plan, *Guidelines Regarding the Support of Transgender and Gender Nonconforming Students*, your decision to certify CPS' MSAP grant, and/or federal law.

CPS further objects to the Department's arbitrary 72-hour deadline to request reconsideration provided in the September 16th letter as unreasonable and untenable. As such, we are requesting an extension of 30 days to submit a more thorough and responsible request for reconsideration. Without waiving any arguments, CPS's current objections to the Department's non-continuation recommendation are detailed below.

The basis for the non-continuation comes from the Department's seemingly foregone and unsupported determination that CPS "appears to be discriminating based on race in violation of Title VI of the Civil Rights Act of 1964" and on the basis of sex in violation of Title IX of the Education Amendments of 1972. Your letter fails to even acknowledge the fact that there are two open investigations with OCR (case numbers OCR 05-25-1339 and 05-25-1447) directly related to the Black Students Success Plan and the *Guidelines Regarding the Support of Transgender and Gender Nonconforming Students*. In fact, CPS has yet to receive any response from your Department in either investigation. It is irresponsible to issue a determination that deeply impacts students in this manner absent the conclusion of said investigations.

Indeed, CPS provided the Department with the requested data in these two matters in April and May 2025.¹ To date, the Department has not engaged with CPS any further; the Department has not issued a determination or a Letter of Finding or attempted to negotiate a resolution agreement in either matter, as is required in Section 303 of the Department's Case Processing Manual ("CPM"). Despite Section 702(d) of the Case Processing Manual referring to interviews as "an integral part of investigations," no interviews have been conducted in either matter. If such

¹ For your convenience, CPS' April and May 2025 responses to those data requests are attached to this correspondence.

actions have occurred, the Department has failed to notify or allow CPS to participate. Finally, the Department has failed to definitively cite a violation of law through a preponderance of the evidence standard, which is required by Section 303 of the Department's own CPM. For this reason, CPS is deeply concerned by OCR's blatant disregard for its own procedures and fundamentals of the long-standing OCR investigatory process.

First, addressing CPS' Black Student Success Plan, CPS is statutorily mandated to correct academic and opportunity gaps for Black students. Effective January 1, 2025, the Illinois School Code requires CPS to create the Chicago Board of Education Black Student Achievement Committee "with the purpose of providing Black students with the maximum opportunity for success in areas where research shows that there has been chronic underperformance of African American students during their elementary and secondary education experience." The charter of this Committee, as required by statute, is to, among other things, "develop strategies and recommendations for Black student achievement and opportunity," and "develop a strategic management plan to identify goals, objectives, and outcomes designed to bring about academic parity between Black children and their peers." *See* 105 Ill. Comp. Stat. 5/34-18.85.

Federally, the Every Student Succeeds Act ("ESSA") requires local education agencies ("LEAs") to analyze data for different "subgroups" of students, which are defined as "economically disadvantaged students, students from major racial and ethnic groups, children with disabilities, and English Learners," and use the measurable data to gauge student progress and create avenues for success. *See* 20 U.S.C. § 6301 (2015). This is exactly what CPS has proposed to do with its Black Student Success Plan, which has not yet been implemented in the District. There is no question that CPS has both a state and federal legal obligation to fulfill as it relates to our student populations.

The Department has made a legal conclusion about CPS's compliance with federal law without either a completed investigation or interviews regarding the details of the concept of the Black Students Success Plan. Moreover, the Department has not articulated whether any specific students have been harmed by the Black Students Success Plan, as the Plan has not yet been implemented. Again, CPS' response to OCR's data request on this matter is attached and articulates the tenets and practicalities of this concept.

Second, as it relates to CPS' support of transgender and gender nonconforming students, again, our policies and practices are prescribed by state and local law, and CPS remains in compliance with those laws. Specifically, the Illinois Human Rights Act protects individuals from unlawful discrimination, which includes discrimination of a person based on their "actual or perceived....sex." This Act protects all students' rights to participate in school athletics consistent with their gender identity. *See* 775 Ill. Comp. Stat. 5/1-102. The Cook County Human Rights Ordinance prohibits discrimination against a person because of "the actual or

perceived....sex.” See Cook County Code of Ordinances § 42. Finally, the City of Chicago’s Human Rights Ordinance requires equal access to public services regardless of sex or gender identity. See City of Chicago’s Human Rights Ordinance § 6-010-010.

Additionally, since 2017, the 7th Circuit Court of Appeals has held that gender identity is included in the definition of sex for the purposes of Title IX. *Whitaker by Whitaker v. Kenosha Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017), *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 772–73 (7th Cir. 2023), *Doe by & through Doe v. Elkhorn Area Sch. Dist.*, 743 F. Supp. 3d 1053, 1070 (E.D. Wis. 2024), and *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 323 F. Supp. 3d 1030, 1036 (S.D. Ind. 2018). Only recently has the Department provided any guidance to rebut this, but this guidance is not yet codified into law. CPS’ policies are a reflection of its legal obligations under federal, state, and local law. These legally compliant policies and practices aim to protect our most vulnerable student population, which includes students who have been subjected to peer bullying, isolation, discrimination, and mental health crises. These students experience higher rates of school refusal than their average peers and report higher rates of suicidal ideation. And yet, despite these distressing facts, the Department seems to suggest the District’s support of its students is antithetical to the goal of MSAP grants. Most concerning, OCR has not made any formal legal findings of noncompliance with Title IX related to these policies. Instead, the Department unconscionably puts CPS in the position of either stripping legally-required support from our most vulnerable students or losing grant funds aimed at providing high-performance level education for our students at magnet schools.

Finally, regarding the nine demands articulated in the Department’s letter, it is not reasonable to expect CPS to agree to take these steps without a completed investigation, the opportunity for a proposed resolution agreement, or a Letter of Finding. Additionally, CPS asserts that its policies are consistent with requirements set forth by federal and state law, and therefore, cannot assume to know which other policies and practices the Department deems non-compliant. The fact remains that CPS was denied due process here because this hasty decision for non-continuation of grant funds was made without proper reason and notice of hearing. Therefore, CPS demands reconsideration and all due process afforded to CPS under the law and the Department’s own guidelines.

Due to the Department’s lack of transparency regarding its decision not to continue CPS’ MSAP grant, CPS files the below request under the Freedom of Information Act, 5 U.S.C. § 552, under which a response from the Department is required within 20 business days.

1. Provide Letters of Findings for case numbers OCR 05-25-1339 and 05-25-1447.
2. Provide the schedule of interviews and the activity log in case numbers OCR 05-25-1339 and 05-25-1447.

3. Provide all interview transcripts and/or notes compiled during the investigations into case numbers OCR 05-25-1339 and 05-25-1447.
4. Provide any records in the Department's possession or upon which the Department relies to demonstrate harm to specific students in the District in case numbers OCR 05-25-1339 and 05-25-1447.
5. Provide any and all emails to or from Craig Trainor (craig.trainor@ed.gov) and any other @ed.gov email address, between April 1, 2025 and September 16, 2025, with the keywords "Chicago Public Schools" or "05-25-1447" or "05-25-1339". If the Department deems this too burdensome, it may provide an email log instead, showing the subject line, recipient data, and date.

Additionally, in order to afford CPS proper due process in responding to this important matter, CPS requests that the Department answer the following as soon as possible:

1. What is OCR's legal justification for withholding MSAP grant funding?
2. What is the nexus between the District's BSSP and the *Guidelines Regarding the Support of Transgender and Gender Nonconforming Students* and the MSAP grant?
3. How did OCR reach the conclusion that the District's BSSP is a violation of Title VI when the plan has not yet been implemented?
4. How did OCR conclude that it was appropriate to open an investigation into CPS' policies and practices when the Complainant failed to identify any harm caused to a CPS student in its complaint?

Please direct all future correspondence regarding this matter to me. I look forward to ongoing communication and a more thoughtful reconsideration of this abrupt and harmful decision. The District, however, is prepared to seek any remedy available under law in the meantime.

Sincerely,

/s/ Elizabeth K. Barton
Acting General Counsel

Cc:

President Sean B. Harden, Board of Education of the City of Chicago
Dr. Macqueline King, Interim Superintendent/CEO of Chicago Public Schools
Preston Lewis, Senior Program Manager, Chicago Public Schools
W. Mike Jayne, Department of Education (william.jayne@ed.gov)