

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

Rapides Parish School Board,

Plaintiff,

v.

**United States Department of
Health and Human Services, et al.,**

Defendants.

Case No. 1:25-cv-00070-DDD-JPM

Judge Dee D. Drell

**Magistrate Judge Joseph H.L.
Perez-Montes**

**PLAINTIFF RAPIDES PARISH SCHOOL BOARD’S RESPONSE TO
DEFENDANTS’ NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff Rapides Parish School Board respectfully responds to Defendants’ Notice of Supplemental Authority (ECF No. 54), *Florida v. Department of Health and Human Services*, No. 25-12095, 2026 WL 2618386 (11th Cir. Sept. 4, 2026) (per curiam).

Defendants allege that the plaintiffs in *Florida* “challenged the same provisions of HHS’s Section 1557 regulations that” the School Board “challenges in Count 11 of the complaint in this action.” ECF No. 54 at 1. But that is not how the Eleventh Circuit describes the *Florida* case. The Eleventh Circuit asserts that although those *Florida* plaintiffs challenged the rule’s “gender identity” language, their “complaint did not challenge the 2024 Rule’s definition of sex discrimination to include sex stereotypes.” *Florida*, 2026 WL 2618386, at *10; *see* 45 C.F.R. § 92.101(a)(2)(v) (sex-stereotypes clause).

Not so here. The School Board’s complaint challenged both the rule’s “gender identity” code sections and its “sex-stereotypes” clause. In its complaint, the School Board pointed out how the rule “not only defines ‘gender-identity’ discrimination to be sex discrimination, it also separately defines ‘sex stereotypes’ to encompass

gender-identity discrimination, 89 Fed. Reg. at 37,699.” Compl. ¶80, ECF No. 1. According to HHS, the sex-stereotypes clause adds its own distinct gender-identity nondiscrimination mandate *on top of* the main gender-identity clause. 89 Fed. Reg. 37,522, 37,578, 37,698–99 (May 6, 2024) (codified at 45 C.F.R. § 92.101(a)).

And courts agree. Two district courts have held that a Section 1557 sex-stereotypes discrimination ban encompasses gender-identity discrimination in addition to the specific “gender identity” language in the rule’s definition. *Walker v. Azar*, 480 F. Supp. 3d 417, 427 (E.D.N.Y. 2020); *Whitman-Walker Clinic, Inc. v. HHS*, 485 F. Supp. 3d 1, 38, 40, 42 (D.D.C. 2020); *see also Walker v. Kennedy*, 790 F. Supp. 3d 138, 141–42, 144 (E.D.N.Y. 2025). Indeed, in *Franciscan Alliance*, the Fifth Circuit ordered injunctive relief precisely because sex stereotypes language threatens to smuggle in a gender-identity mandate—as that Court said, because these courts had held that “sex-stereotyping discrimination encompasses gender identity discrimination.” *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 372–73 (5th Cir. 2022).

To this day, this sex-stereotypes gender-identity mandate remains on the books. In fact, HHS has still not even *proposed* to change this sex-stereotypes gender-identity aspect of the Section 1557 rule. Just like in *Franciscan Alliance*, the sex stereotypes language remains a live threat. 47 F.4th 368, 372–73.

That’s why the School Board brought an Administrative Procedure Act claim that HHS lacked statutory authority for this sex-stereotypes gender-identity mandate, Compl. ¶¶339–49, and it also brought a claim that “HHS failed to adequately consider that sex is a biological reality and that biological sex differences are not sex stereotypes.” Compl. ¶353.

The School Board’s prayer for relief thus asks that the Court “[h]old unlawful, set aside, vacate, and enjoin enforcement, under 5 U.S.C. §§ 701, 706 ... the Section 1557 rule ... to the extent that they address gender identity and/or

gender dysphoria.” Compl., Prayer for Relief ¶A. That request seeks vacatur of the *entire* rule in 45 C.F.R. § 92.101, including the sex-stereotypes clause at 45 C.F.R. § 92.101(a)(2)(v), to the extent any part of 45 C.F.R. § 92.101 included a gender-identity mandate. The School Board also asks for injunctive and declaratory relief ensuring “That HHS... may not apply ... Section 1557 ... to address discrimination on the basis of gender identity or sex stereotypes or other theory.” Compl., Prayer for Relief ¶C.2.

In the same way, the School Board moved for summary judgment against the sex-stereotypes gender-identity mandate. Pl.’s Mot. for Partial Summ. J. at 2, ECF No. 19 (seeking vacatur of 45 C.F.R. § 92.101 in full to the extent that it “addresses gender identity and/or gender dysphoria”). The School Board sought to vacate “[t]he HHS Section 1557 rule, Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024), including the gender-identity provisions codified at ... 45 C.F.R. §§ ... 92.101 ... and any other provisions of the rule that Defendants may use to claim authority to prohibit gender-identity discrimination using the rule.” Pl.’s Mot. for Partial Summ. J. at 1–2, ECF No. 19. The School Board then briefed its claim about the sex-stereotypes clause because no court had ever vacated that sex-stereotypes part of the rule. Pl.’s Mem. Supp. Mot. for Partial Summ. J. at 2, 34–35, ECF No. 22; Pl.’s Reply Supp. Mot. for Partial Summ. J. at 6, ECF No. 38; *see also* Pl.’s Resp. to Mot. to Dismiss at 2, ECF No. 35.

So the case is not moot. *Franciscan All.*, 47 F.4th at 374. When the Eleventh Circuit dismissed the *Florida* appeal as moot, it was dismissing a challenge to specific “gender identity” code sections that had already been vacated. Here, the “sex stereotypes” clause that the School Board also challenged has not been vacated. Vacatur given to a separate party in a separate case on a distinct question is not the “precise” relief the School Board still seeks: vacatur of the existing “sex stereotypes” requirement in the final rule. *Id.* So the former cannot render vacatur “impossible”

to moot the School Board's case. *United States v. Heredia-Holguin*, 823 F.3d 337, 340 (5th Cir. 2016). *Florida* had no occasion to consider this question, since it concluded there was no claim against the "sex stereotypes" clause in that case.

Respectfully submitted this 25th day of September, 2026.

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