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May 14, 2025

Delaware Valley School District  
Board of Education  
236 209 US-6  
Milford, PA 18337

*Copy to: Nicholas McIntyre, Esq.*

Dear School Board Directors,

Education Law Center of Pennsylvania (ELC) provides this letter in response to concerns brought to our attention by parents and community members in Delaware Valley School District (District) regarding the board members' discussions of restricting the rights of transgender students and misunderstandings about the obligations of Pennsylvania public schools under federal and state law.

***Federal and state law require nondiscrimination protections and equitable access for LGBTQ students***

The District's legal obligations to LGBTQ students do not arise from and are not limited to any OCR resolution. Students' rights – and schools' liability – are identified in federal and state constitutions, statutes and regulations, and case law interpreting these.

A presidential executive order does not have the force of law and cannot supersede federal and state statutes or case law.<sup>1</sup> Moreover, because the executive orders do not have the force of law, they cannot preempt state law. A federal district court judge in Pennsylvania noted in court on March 4, 2025 that an "executive order [about girls' sports] specifically says it does not change the law" as she rejected a cisgender student athlete's request for a broad temporary ban on transgender students playing sports.<sup>2</sup> The executive orders also include the language "consistent with applicable law" and many of the assertions and requests in the executive orders are in fact inconsistent with federal and state law, so they are not operational. Where federal executive actions overreach their authority and contradict federal or state law, they are subject to legal challenge. Many of the Trump administration's executive actions continue to be challenged through litigation across multiple issue areas, including the rights of students and legal obligations of schools. For an overview and status of the many legal challenges, see Education

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<sup>1</sup> See, e.g., *Local 1498, Am. Fed'n Gov't Emps. v. Am. Fed'n Gov't Emps.*, 522 F.2d 486, 491 (3d Cir. 1975) (holding that an executive order "cannot attain the status as a 'law of the United States'" if it regulates "solely as a product of executive authority and not as a consequence of congressional law making").

<sup>2</sup> See, A federal judge rejected a Quakertown student's motion to bar transgender athletes from girls' sports (Mar. 4, 2025), <https://www.inquirer.com/education/trans-athlete-quakertown-colonial-plymouth-whitemarsh-20250304.html>

## Counsel's Summary and Analysis of Trump Administration Executive Actions Impacting Education.<sup>3</sup>

The U.S. Supreme Court and many federal courts have consistently affirmed that discrimination on the basis of sexual orientation, transgender status, gender identity, or gender expression is unlawful discrimination “on the basis of sex,” and preventing LGBTQ+ students from accessing programs and facilities in schools violates Title IX and other civil rights laws.<sup>4</sup> Additionally, the U.S. Supreme Court has at least four times in the last five years denied *certiorari* for cases challenging school policies that support transgender students, refusing to disturb lower court rulings that affirm the rights of transgender students.<sup>5</sup>

The Third Circuit – the controlling federal court in Pennsylvania – has recognized that school districts have a “compelling interest in protecting transgender students” and described:

When a school promotes diversity and inclusion, “classroom discussion is livelier, more spirited, and simply more enlightening and interesting [because] the students have the greatest possible variety of backgrounds.” Students in diverse learning environments have higher academic achievement leading to better outcomes for all students. Public education “must prepare pupils for citizenship in the Republic,” and inclusive classrooms reduce prejudices and promote diverse relationships which later benefit students in the workplace and in their communities.<sup>6</sup>

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<sup>3</sup> Available at, [https://educationcounsel.com/our\\_work/publications/2025-federal-executive-actions/educationcounsel-s-summary-and-analysis-of-trump-administration-executive-actions-impacting-education](https://educationcounsel.com/our_work/publications/2025-federal-executive-actions/educationcounsel-s-summary-and-analysis-of-trump-administration-executive-actions-impacting-education)

<sup>4</sup> See, e.g., *Bostock v. Clayton Cnty.*, 590 U.S. 644, 140 S.Ct. 1731 (2020) (holding that dismissal of an employee for being gay or transgender is sex-based discrimination under Title VII); *B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017) (Title IX); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018) (Title IX). See also *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239-40 (9th Cir. 2020) (Title IX); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 535 (3d Cir. 2018) (Title IX); *United States EEOC v. Scott Med. Health Ctr., P.C.*, 217 F. Supp. 3d 834, 841 (W.D. Pa. 2016) (gay male employee stated a claim of sex discrimination based on sex stereotyping that a person should conform to heterosexuality).

<sup>5</sup> See *A.C. by M.C. v. Sch. Dist of Martinsville*, 75 F.4th 760 (7<sup>th</sup> Cir. 2023), *cert denied sub nom.*, --- S.Ct. ---, 2024 WL 156480 (Jan. 16, 2024) (declining to review preliminary injunction awarded in favor of transgender student challenging denial of bathroom access due to strong likelihood of success of sex-based claim); *Grimm v. Gloucester Cnty. Sch. Bd.*, 400 F.Supp. 3d 444 (E.D. Va. 2019), *aff'd*, 972 F.3d 586 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 2878 (June 28, 2021) (declining to take action, allowing District Court decision striking down the school board’s policy barring a transgender student from using the bathrooms that aligned with his gender identity); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075 (D. Or. 2018), *aff'd*, 949 F.3d 1210 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 894 (Dec. 7, 2020) (declining to take action, allowing policy to continue permitting transgender students using same restrooms and locker rooms as their peers); *Doe v. Boyertown Area Sch. Dist.*, 276 F.Supp. 3d 324 (E.D. Pa. 2017), *aff'd*, 897 F.3d 518 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2636 (May 28, 2019) (declining to take action, allowing Boyertown’s policies supporting transgender students to stand);

<sup>6</sup> *Doe v. Boyertown Area School Dist.*, 897 F.3d at 529 (holding cisgender students could not establish likelihood of success on constitutional privacy claim and upholding school policy permitting transgender students to use bathroom facilities aligned with their gender identity).

The Third Circuit found that “[t]hese values serve an important educational function for both transgender and cisgender students.”<sup>7</sup> Discrimination at school creates particularly severe risks for transgender students, the Court held, because “[m]istreatment of transgender students can exacerbate gender dysphoria, lead to negative educational outcomes, and precipitate self-injurious behavior.”<sup>8</sup> In short, “[w]hen transgender students face discrimination in schools, the risk to their wellbeing cannot be overstated.”<sup>9</sup>

The Third Circuit has affirmed transgender students’ right to use school bathroom and locker room facilities aligned with their gender identity. In its 2018 decision in the *Boyertown* case, the Third Circuit held that there was no privacy violation in having transgender and cisgender students share facility space.<sup>10</sup> Multiple other federal district and circuit courts have resulted in the same outcome, affirming the right of transgender students to access the school facility aligned with their gender identity.<sup>11</sup> This is clearly established law that school districts violate at significant risk of liability.

Similarly, all federal circuit courts across the country that have addressed on the merits the issue of transgender student athletes’ right to play sports have upheld the right of transgender students.<sup>12</sup> As recently as March 2025, a federal district judge in the Eastern District of Pennsylvania rejected a cisgender student athlete’s request for a ban on transgender students

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 529.

<sup>9</sup> *Id.*

<sup>10</sup> See *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 521 (3d Cir. 2018) (finding that a school policy barring transgender students from restrooms that align with their gender identity would pose a potential Title IX violation).

<sup>11</sup> See *Evancho v. Pine Richland Sch. Dist.*, 237 F. Supp.3d 267 (W.D. Pa. 2017) (holding that plaintiffs were likely to succeed on their Equal Protection challenge to a school board resolution limiting transgender students’ access to bathrooms); *A.H. v. Minersville Area Sch. Dist.*, 408 F. Supp.3d 536 (M.D. Pa. 2019) (denying summary judgment for the school district after reviewing similar cases because the policy prohibiting transgender students from using restrooms corresponding to their gender identity discriminated in violation of Title IX). See e.g. *A.C. by M.C. v. Sch. Dist of Martinsville*, 75 F.4th 760 (7th Cir. 2023), *cert denied*, --- S.Ct. ---, 2024 WL 156480 (Jan. 16, 2024) (declining to take action, affirming preliminary injunction & finding likely success on the merits for transgender boys alleging sex discrimination in violation of Title IX and Equal Protection because school policies prevented them from using bathroom and locker rooms aligned with their gender identity); *Grimm v. Gloucester Cnty. Sch. Bd.*, 400 F.Supp. 3d 444 (E.D. Va. 2019), *aff’d*, 972 F.3d 586 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 2878 (June 28, 2021) (declining to take action, allowing the District Court to strike down the school board’s policy barring a transgender student from using the bathrooms that aligned with his gender identity).

<sup>12</sup> See *B.P.J. ex rel. Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024) (holding that a law banning transgender girls and women from participating in female sports violates Title IX as to plaintiff because it discriminated against her on the basis of her gender identity); *Doe v. Horne*, 115 F.4th 1083 (9th Cir. 2024) (upholding a preliminary injunction of a law banning plaintiffs, two transgender girls, from participating in female sports since it violated equal protection as it discriminated based on their transgender status, which is subject to heightened scrutiny); *Hecox v. Little*, 104 F.4th 1061 (9th Cir. 2024) (upholding a preliminary injunction that banned transgender women and girls from female sports because it discriminates on the basis of sex and was directed at excluding women and girls rather than promoting sex equality); see also *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018) (ruling that the government has a compelling interest in protecting transgender students from discrimination and that “barring transgender students from restrooms that align with their gender identity would pose a potential Title IX violation”).

playing sports as unlikely to be successful on their claim of discrimination that was largely based on a federal executive order.<sup>13</sup>

Pennsylvania law also protects LGBTQ+ students from discrimination based on their gender identity or sexual orientation. The Pennsylvania Constitution and the Equal Rights Amendment prohibits discrimination because of sex.<sup>14</sup> Pennsylvania's anti-discrimination statute, the Pennsylvania Human Relations Act (PHRA)<sup>15</sup> prohibits discrimination in schools and other contexts on the basis of race, disability, ethnicity, national origin, ancestry, religion, family status, and sex (including gender identity and sexual orientation).<sup>16</sup>

The Pennsylvania Human Relations Commission (PHRC) enforces this key anti-discrimination law, which affords broad protections against sex-based discrimination in public schools. Effective Aug. 16, 2023, PHRA's regulations were amended to more explicitly identify conduct that constitutes illegal sex-based discrimination.<sup>17</sup> The PHRA recognizes that prohibitions against sex-based discrimination are "comprehensive."<sup>18</sup> Students are protected against discrimination on the basis of sex, "including pregnancy, childbirth, breastfeeding, sex assigned at birth, gender identity or expression, affectional or sexual orientation, and differences in sex development."<sup>19</sup> PHRA's existing guidance expansively protects gender identity, which is one's "innermost concept of self as male, female, a blend of both or neither."<sup>20</sup> Gender expression is also broadly defined as the external "appearance of one's gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine."<sup>21</sup> All gender identities and expressions, including those held by transgender students, are protected by the

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<sup>13</sup> See *Magalengo v. PIAA, Quakertown Community Sch. Dist., Colonial Sch. Dist.*, Order Mar. 4, 2025 (ECF 22), Case No. 2:25-cv-325 (E.D.Pa.). See also, Federal judge rejected a Quakertown student's motion to bar transgender athletes from girls' sports, <https://www.inquirer.com/education/trans-athlete-quakertown-colonial-plymouth-whitemarsh-20250304.html>

<sup>14</sup> See Art. I, § 28; *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Svs.*, 309 A.3d 808, 868-69, 869 n. 51 (Pa. 2024) (finding a sex-based distinction is presumptively unconstitutional and requires a compelling state interest).

<sup>15</sup> Pa. Human Relations Act, 43 PA. STAT. ANN. § 953.

<sup>16</sup> *Id.*; *id.* § 954(l).

<sup>17</sup> Protected Classes Under the PHRA and PFOA, 16 PA. CODE § 41.201-41.207 (effective Aug. 16, 2023), <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-24/788.html> (final regulations defining terms related to sex, sexual orientation, and gender identity used in the PHRA and PFOA); Pennsylvania Human Relations Commission, Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act 2-3 (Mar. 3, 2021), <https://www.phrc.pa.gov/AboutUs/Documents/APPROVED%20Sex%20Discrimination%20Guidance%20PHRA.pdf> (delineating prohibitions in the PHRA against discrimination on the basis of sex prohibit discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Pa. Human Relations Comm'n, *Guidance on Discrimination on the Basis of Sex Under the Pennsylvania Human Relations Act*, 3 (Mar. 3, 2021), <https://www.phrc.pa.gov/AboutUs/Documents/APPROVED%20Sex%20Discrimination%20Guidance%20PHRA.pdf>.

<sup>21</sup> *Id.*

PHRA. This protection is also inclusive of the ways students' understanding of these identities evolves over time.

Pennsylvania courts have held school districts responsible for discrimination against students based on gender identity under the PHRA. In 2018, a Pennsylvania state court entered a \$500,000 damages award and another \$500,000 attorney fees charged against a school district for violating the Human Relations Act by failing to intervene and address the bullying and harassment a student experienced from other students due to her gender presentation and not conforming to gender stereotypes.<sup>22</sup>

### ***Schools must prevent hostile learning environments and ensure affirming schools for LGBTQ students***

Using correct pronouns or providing equitable access to affirming facilities could be the difference between life and death for transgender and nonbinary youth, who are more vulnerable to suicidal ideations and self-harm. More than half of transgender youth contemplated suicide in the past year, and over 60% of transgender and nonbinary youth engaged in self-harm.<sup>23</sup> The National Education Association (NEA) has explained that using pronouns consistent with a student's gender identity is "critical to the health and well-being of transgender and gender-diverse people."<sup>24</sup> It also makes our classrooms safer while empowering LGBTQ students.

Numerous courts have recognized that a school's policy or actions that treat gay, lesbian, non-binary or transgender students differently from other students can cause serious harm.<sup>25</sup>

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<sup>22</sup> *Wible v. School District of Philadelphia*, No. 15-043169, 1392 CD 2018 (Phila. Cty. Ct. of Comm. Pls. 2018)(judgment entered for student plaintiff in the amount of \$500,000 damages and an additional \$578,000 in attorney fees), <https://www.berneylaw.com/wp-content/uploads/2017/10/Opinion-Rule-1925.pdf>.

<sup>23</sup> The Trevor Project, 2022 National Survey on LGBTQ Youth Mental Health, [https://www.thetrevorproject.org/survey-2022/assets/static/trevor01\\_2022survey\\_final.pdf](https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf); see also Johns MM, Lowry R, Andrzejewski J, et al. Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017. *MMWR Morb Mortal Wkly Rep* 2019;68:67–71. DOI: <http://dx.doi.org/10.15585/mmwr.mm6803a3>

<sup>24</sup> See *Why Pronouns Matter* available at <https://www.nea.org/advocating-for-change/new-from-nea/why-pronouns-matter>.

<sup>25</sup> See, e.g., *Grimm*, 972 F.3d at 617-18 (describing injuries to a transgender boy's physical and emotional health as a result of denial of equal treatment), as amended (Aug. 28, 2020), reh'g en banc denied, 976 F.3d 399 (4th Cir. 2020), cert. denied, 2021 WL 2637992 (June 28, 2021); *Adams*, 968 F.3d at 1306–07 (describing "emotional damage, stigmatization and shame" experienced by a transgender boy as a result of being subjected to differential treatment); *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1044–46, 1049–50 (7th Cir. 2017) (describing physical and emotional harm to a transgender boy who was denied equal treatment); *Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217, 221–22 (6th Cir. 2016) (describing "substantial and immediate adverse effects on the daily life and well-being of an eleven year-old" transgender girl from denial of equal treatment); *Doe v. Univ. of Scranton*, 2020 WL 5993766 (M.D.Pa. Oct. 9, 2020), at \*\*1–3 (describing harassment and physical targeting of a gay college student that interfered with the student's educational opportunity); *Harrington ex rel. Harrington v. City of Attleboro*, No. 15–CV–12769–DJC, 2018 WL 475000, at \*\*6–7 (D. Mass. Jan. 17, 2018) (describing "'wide-spread peer harassment' and physical assault [of a lesbian high school student] because of stereotyping animus focused on [the student's] sex, appearance, and perceived or actual sexual orientation").

Federal courts have found against school districts where students experience “emotional damage, stigmatization and shame” as a result of being subjected to differential treatment and have struck policies that cause “substantial and immediate adverse effects on the daily life and well-being” of transgender students.<sup>26</sup>

It doesn’t have to be this way. Affirming school environments are associated with reduced suicide risk among LGBTQ youth. LGBTQ youth who reported having at least one LGBTQ-affirming space had 35% reduced odds of reporting a suicide attempt in the past year.<sup>27</sup> A recent study documented that respecting transgender students’ names and pronouns was associated with a 56 percent decrease in suicide attempts and a 29 percent decrease in suicidal thoughts.<sup>28</sup>

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Courts have upheld the rights of LGBTQ students relating to multiple other school-based issues beyond those enumerated here, and I’m happy to provide additional information to assist the District and Board in these matters. I frequently provide presentations about these issues to Pennsylvania audiences, and you can find a [recording and slides online](#).

Education Law Center urges the District and Board members to comply with their clear legal obligations under federal and state law and reject any misleading suggestion that federal executive actions compel contrary action.

Sincerely,



Kristina Moon, Esq.  
EDUCATION LAW CENTER

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<sup>26</sup> See e.g., *Adams*, 968 F.3d at 1306–07; *Dodds*, 845 F.3d at 221–22.

<sup>27</sup> See *LGBTQ & Gender-Affirming Spaces*, The Trevor Project (Dec. 3, 2020) <https://www.thetrevorproject.org/research-briefs/lgbtq-gender-affirming-spaces/>.

<sup>28</sup> See Stephen T. Russell et al., Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation and Suicidal Behavior among Transgender Youth, 63 *J. Adolescent Health* 503, 505 (2018).