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March 19, 2026

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 U.S. Department of Education’s February 25, 2026 letter terminating the prior resolution agreement and demanding the District rescind policies affirming any transgender students’ gender identity.

My letter to the Board in May 2025 remains relevant on these issues. 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. Neither a presidential executive order nor a demand letter or guidance from the Office of Civil Rights can create law or supersede federal and state statutes and case law.¹

There is no controlling federal court decision telling Pennsylvania schools that Title IX requires restricting the rights of transgender students. 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

¹ 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”).

prejudices and promote diverse relationships which later benefit students in the workplace and in their communities.²

There is a clear requirement under Pennsylvania law protecting the rights of transgender students in school and requiring schools to prevent discrimination on the basis of sex, gender identity and gender expression.³ 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.⁴

While it is understandable that school boards responsible for district funds are intimidated by the administration's threats to federal education funding, federal agencies must follow statutorily prescribed procedural steps to legally cut funds for Title IX violations.⁵ Before cutting off funds, the government must: (1) conduct a program-by-program evaluation of the alleged violations; (2) provide notice and an opportunity for hearing; (3) determine that compliance cannot be secured by voluntary means; (4) limit any cuts to only those particular programs in which noncompliance has been found; and (5) submit a report to the relevant committees in Congress at least 30 days before the funds are halted. Many jurisdictions across the country are defending affirming practices that serve their LGBTQ students and maintain their legal obligations under state and federal law.

On behalf of concerned parents, community members and impacted students, Education Law Center Pennsylvania urges the District and Board members to comply with their clear legal obligations under federal and state law and pause and undertake a thorough analysis of options at this stage.

Sincerely,



Kristina Moon, Esq.
EDUCATION LAW CENTER

² *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).

³ Pa. Human Relations Act, 43 PA. STAT. ANN. § 953; Protected Classes Under the PHRA and PFEPA, 16 Pa. Code §§ 41.201-41.207 (final regulations defining terms related to sex, sexual orientation, and gender identity used in the PHRA and PFEPA).

⁴ *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>.

⁵ 20 U.S.C. § 1682 (Title IX).

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