



November 14, 2025

Kimberly Richey
Assistant Secretary for Civil Rights
U.S. Department of Education
Office for Civil Rights
400 Maryland Ave. SW
Washington, D.C., 20202-1100

Re: Obama-Era Office for Civil Rights Resolution Agreement and Corresponding
Delaware Valley School District Policy Violate Title IX
OCR Case No. 03141056

Dear Assistant Secretary Richey:

We write to call to your attention to a 2015 Resolution Agreement between the Office for Civil Rights (OCR) and the Delaware Valley School District in Milford, Pennsylvania and the District's corresponding nondiscrimination and harassment policies (Policies).¹ The Resolution Agreement and Policies undermine the purpose of Title IX of the Education Amendments of 1972 and violate President Trump's Executive Orders and Department of Education guidance on K-12 education and gender ideology.² Yet the District purports to rely on the Resolution Agreement to maintain these unlawful harassment and discrimination policies.³

Southeastern Legal Foundation⁴ therefore requests that the Department of Education and OCR take all necessary action to terminate the Resolution Agreement so that Delaware Valley School District may amend its nondiscrimination and harassment policies to comply with Title IX.

¹ The Resolution Agreement, related to OCR Case Number 03141056, and Delaware Valley School District Policy 103 and 248 are attached to this letter for your convenience.

² E.g., *Dear Colleague Letter*, U.S. Dep't of Educ. Off. for Civil Rights (Feb. 4, 2025), <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf>; *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, The White House (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/> (*Defending Women*).

³ DVSD Board, *DVSD April 2025 Special Meeting Session Part 2*, YouTube (Apr. 16, 2025), at 1:27:00–1:30:00 (discussing "adhering" to Resolution Agreement as basis for maintaining policies at issue and receiving counsel to "see what OCR has to say" before acting on the policies).

⁴ Southeastern Legal Foundation (slfliberty.org) rebuilds the American Republic by reclaiming civil liberties, protecting free speech, securing property rights, and restoring constitutional balance. Since 1976, SLF sets lasting precedent both in and out of the courtroom to preserve and protect Americans' rights under our Constitution through legal action against the government and vital constitutional programs to educate and equip Americans.

The Resolution Agreement, executed on October 22, 2015, contravenes Title IX in two fundamental ways. First, contrary to the 2020 Title IX Rule currently in effect,⁵ the Resolution Agreement folds “gender identity,” “gender expression,” “gender stereotypes,” and “transgender” status into “sex” for purposes of Title IX and policies within the Delaware Valley School District.⁶ To this end, it defines “gender-based discrimination” to include “harassment of a student based on the student’s sex, including gender identity, gender expression, and nonconformity with gender stereotypes, that results in the denial *or limitation* of education services, benefits, or opportunities.”⁷ In this respect, the Resolution Agreement mirrors a Dear Colleague letter issued by the Obama Administration in May 2016, which errantly defined “sex” to include “gender identity.”⁸ OCR notably rescinded the Obama-era Dear Colleague letter on February 22, 2017.⁹

Second, the Resolution Agreement indefinitely forces this definition of “sex,” as well as the accompanying discrimination and harassment protections and standards, on the Delaware Valley School District. Specifically the Resolution Agreement requires the District to not only adopt but also maintain “policies, procedures, [and] regulations” pertaining to “discrimination (including harassment)” that “specifically include gender-based discrimination as a form of discrimination based on sex, and . . . state that gender-based discrimination includes discrimination based on a student’s gender identity, gender expression, gender transition, transgender status, or gender nonconformity.”¹⁰ It also commits the District to “modify . . . policies or develop a comprehensive policy (“Gender-Based Discrimination Policy”) to ensure that all students, including transgender students, have an equal opportunity to participate in all education programs and activities offered by the District.”¹¹

The Resolution Agreement impacts the District through a pair of policies that cite Title IX for authority and have been in effect since the Agreement’s execution.¹² First, District Policy 103, Nondiscrimination in School and Classroom Practices anoints gender, sexual orientation, and

⁵ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026 (May 19, 2020) (codified in Title 34 of the C.F.R.); *see also Dear Colleague Letter* at 2, *supra* note 2 (“[T]he binding regulatory framework for Title IX enforcement includes the principles and provisions of the 202 Title IX Rule . . . but excludes the vacated 2024 Title IX Rule.”).

⁶ Resolution Agreement at 1–3.

⁷ *Id.* at 1 (emphasis added).

⁸ *See Dear Colleague Letter on Transgender Students* at 2, U.S. Dep’t of Educ. Off. for Civil Rights (May 13, 2016), <https://perma.cc/LK8T-46J4> (“The Departments treat a student’s gender identity as the student’s sex for purposes of Title IX and its implementing regulations. . . . Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.”); *see also Dear Colleague Letter* at 3 n.9, U.S. Dep’t of Educ. Off. for Civil Rights (Apr. 4, 2011), <https://perma.cc/4UB8-94NE> (extending Title IX protection to harassment based on “sex-stereotyping”).

⁹ *Dear Colleague Letter*, U.S. Dep’t of Educ. Off. for Civil Rights (Feb. 22, 2017), <https://perma.cc/824Z-JELD>.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² The policies have persisted despite contravening 2020 and 2025 Department of Education interpretations of Title IX. *See* 85 Fed. Reg. 30026.

pregnancy as protected classes from discrimination.¹³ Second, and similarly, District Policy 248, Unlawful Harassment anoints gender and sexual orientation as protected classes from harassment.¹⁴ This latter policy goes further, adopting a weakened definition of “harassment” which includes

verbal . . . conduct relating to an individual’s . . . gender . . . [or] sexual orientation . . . when such conduct

- (1) Is sufficiently severe, persistent *or* pervasive that it *affects* an individual’s ability to participate in or benefit from an educational program or activity. . . .”
- (2) Has the purpose or effect of substantially or *unreasonably interfering with* an individual’s academic performance.
- (3) Otherwise *adversely affects* an individual’s learning opportunities.¹⁵

Policy 248 defines “sexual harassment” in a similar manner, to include “verbal . . . conduct” that “is sufficiently severe, persistent *or* pervasive that it has the purpose or effect of *substantially interfering with* the student’s school performance or creating an intimidating, hostile or *offensive* educational environment.”¹⁶ These definitions contravene the 2020 Title IX Rule, which employs a more stringent standard by defining harassment as “[u]nwelcome conduct determined by a reasonable person to be *so severe, pervasive, and objectively offensive* that it *effectively denies* a person equal access to the recipient’s education program or activity.”¹⁷

Again, the Delaware Valley School District Board of Education is purportedly relying on the Resolution Agreement to maintain these harassment and discrimination policies.¹⁸ In addition to violating Title IX itself, the policies follow the now vacated Biden Administration Title IX Rule.¹⁹ Several federal courts that vacated the Biden rule recognized that the Biden rule, by “expanding the meaning of ‘on the basis of sex’ to include ‘gender identity’ turns Title IX on its head.”²⁰ Equally

¹³ Delaware Valley School District, 103, Nondiscrimination in School and Classroom Practices at 1 (Apr. 9, 2015).

¹⁴ Delaware Valley School District, 248, Unlawful Harassment at 1 (May 19, 2011).

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.* at 2 (emphasis added).

¹⁷ 85 Fed. Reg. at 30574 (emphasis added).

¹⁸ *Supra* note 3.

¹⁹ *See* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474 (Apr. 29, 2024).

²⁰ *Carroll Indep. Sch. Dist. v. United States Dep’t of Educ.*, Civil Action No. 4:24-cv-00461-O, 2025 U.S. Dist. LEXIS 124115, at *9 (N.D. Tex. Feb. 19, 2025); *see also Tennessee v. Cardona*, 762 F. Supp. 3d 615, 622 (E.D. Ky. 2025) (“Put simply, there is *nothing* in the text or statutory design of Title IX to suggest that discrimination ‘on the basis of sex’ means anything other than it has since Title IX’s inception—that recipients of federal funds under Title IX may not treat a person worse than another similarly-situated individual on the basis of the person’s sex, i.e., male or female.”); *Texas v. Cardona*, 743 F. Supp. 3d 824, 870–71 (N.D. Tex. 2024) (“The Guidance Documents’ interpretation of ‘sex’ and the accompanying requirement that schools treat ‘gender identity’ the same as biological sex flouts Title IX. . . . By interpreting the term ‘sex’ in Title IX to embrace ‘gender identity’ as distinct from biological sex, the Guidance Documents are contrary to law and exceed the Department’s statutory authority.”); *Kansas v. U.S. Dep’t of Educ.*, 739 F. Supp. 3d 902, 919 (D. Kan.

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problematic, a “sufficiently severe, persistent or pervasive” standard coupled with a “unreasonably interfering with” or “adversely affects” threshold for finding harassment is unconstitutionally vague when applied within the gender identity context.²¹

Finally, both the Resolution Agreement and the District policies maintained under the Agreement are contrary to President Trump’s executive orders and to recent Department of Education guidance. The orders and guidance consistently recognize that there are only “two sexes, male and female”; that sex is biological and “not changeable”; and that “gender identity” has no place within Title IX.²² The District policies are also contrary to the Department of Education’s 2020 Final Rule governing Title IX.²³ Requiring a school to maintain policies contrary to prevailing federal statutes, rules, and executive orders, as the Resolution Agreement does, undermines Title IX protections for girls in classrooms, locker rooms, restrooms, and on the athletic fields.²⁴

Despite this state of the law, the Delaware Valley School District Board of Education continues to rely upon and hide behind the Resolution Agreement to maintain Policy 103 and Policy 248.²⁵ Accordingly, we urge OCR to rescind the Resolution Agreement and notify the District of its rescission so that the District’s Board of Education is free, beyond a shadow of a doubt, to revise the offending policies that promote a misguided and incorrect understanding of Title IX.

Thank you for your attention to this matter. Should you have any questions or wish to discuss this matter further, you can reach me by email at kherrmann@southeasternlegal.org.

Yours in Freedom,



Southeastern Legal Foundation
Kimberly S. Hermann

cc: The Honorable Linda McMahon, U.S. Secretary of Education
Randolph Willis, Deputy Assistant Secretary for Enforcement
Bradley Burke, Regional Director, U.S. Dep’t of Education, Office of Civil Rights

2024) (“[T]he court finds that the unambiguous plain language of the statutory provisions . . . make clear that the term ‘sex’ means the traditional concept of biological sex in which there are only two sexes, male and female.”).

²¹ *Carroll Indep. Sch. Dist.*, 2025 U.S. Dist. LEXIS 124115, at *10–11; *Tennessee*, 762 F. Supp. 3d at 625; *Kansas*, 739 F. Supp. 3d at 926–28; *accord* 85 Fed. Reg. at 30574 (codified at 34 C.F.R. § 106.30) (adopting a “severe, pervasive and objectively offensive” standard and an “effectively denies” standard)

²² *See Dear Colleague Letter* at 1 (quoting *Defending Women*).

²³ *See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. at 30574 (codified at 34 C.F.R. § 106.30) (adopting a more stringent standard for definition of harassment).

²⁴ *Defending Women*, §§ 2(f)–(g), 3(b), (e), (g), 4(d).

²⁵ *Supra* note 3.