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August 15, 2025

Mr. Bradley R. Burke
Regional Director
Office for Civil Rights
U.S. Department of Education
sent via email: Bradley.Burke@ed.gov

Re: Case No. 11-25-1309 (Prince William County Public Schools)

Dear Mr. Burke:

We write in response to the Office for Civil Rights' ("OCR") Letter of Findings ("LOF"), which was jointly addressed to Prince William County Public Schools ("PWCS"), Loudoun County Public Schools, Fairfax County Public Schools, Alexandria Public Schools, and Arlington Public Schools, and the accompanying draft Resolution Agreement issued to PWCS on July 25, 2025. OCR has made clear that certain terms of the proposed Resolution Agreement – including the recission of components in PWCS's regulation allowing transgender students access to facilities consistent with their gender identity – are non-negotiable. However, because OCR's interpretation of Title IX contradicts binding Fourth Circuit precedent interpreting Title IX, existing law prohibits PWCS from agreeing to the Resolution Agreement as proposed. Accordingly, we write this letter to request an opportunity to meet with you to review our concerns regarding the initial draft of the Resolution Agreement. If the Department is not willing to accommodate our request, we respectfully propose staying this matter to allow for conclusive direction from the Supreme Court of the United States on key legal issues relevant to PWCS's regulation.

Complying with Title IX remains a top priority for PWCS, as does providing equal access to PWCS's educational programs and activities. PWCS is open to further discussion with OCR regarding resolution with those priorities in mind. The terms of the proposed Resolution Agreement that OCR described as key terms directly conflict with the Fourth Circuit's binding interpretation of both the Equal Protection Clause and Title IX in *Grimm v. Gloucester County*, 972 F.3d 586, 617 (4th Cir. 2020), *as amended* (Aug. 28, 2020). *Grimm* expressly held that prohibiting students from using facilities that correspond with their gender identity constitutes sex discrimination under Title IX and violates the Equal Protection Clause of the Fourteenth Amendment. *See* 972 F.3d at 617. This precedent is the applicable law in Virginia and cannot be

displaced by the Department's informal interpretations of Title IX outlined in the LOF and draft Resolution Agreement. *See Loper Bright Ents. v. Raimondo*, 603 U.S. 369, 413 (2024) ("[L]egal interpretation" is, "emphatically, the province and duty of the judicial department.") (citation omitted).

The same is true for the Department's view that the Supreme Court's decision in *United States v. Skrmetti* abrogated the Fourth Circuit's ruling in *Grimm*. 145 S. Ct. 1816 (2025). *Skrmetti* did not address Title IX; it addressed application of the Equal Protection clause in the specific context of state laws barring gender affirming medical care for minors, which is not the issue present here. The majority's context-specific decision is far from a nullification of the *Grimm* ruling. Indeed, the Fourth Circuit has shown no indication that its ruling in *Grimm* has been abrogated. To the contrary: the court recently enjoined the state of South Carolina from enforcing a ban on transgender students using bathroom facilities consistent with their gender identities. *See* Order Granting Motion Pending Appeal (Doc. 42), *John Doe, et al. v. State of South Carolina, et al.*, Case No. 25-1787 (4th Cir. Aug. 12, 2025).

Following the Notice of Complaint issued by the Department in this matter, PWCS requested a Notice of Interpretation on February 28, 2025, specifically asking for guidance in light of the *Grimm* decision. PWCS reiterated this request in its Supplemental Response to OCR's RFI. To date, OCR has neither responded to these requests, nor otherwise offered any guidance on how to reconcile its position with *Grimm*, short of a directive to rescind language in PWCS Regulation 738-5 related to facilities or face an enforcement action. Given these circumstances, the threatened enforcement action without any opportunity for an "informal resolution" as contemplated by the applicable regulations is premature and amounts to a final agency action. *See American Federation of Teachers, et al. v. Department of Education, et al*., Case No. SAG-25-628, Memorandum Opinion, at pp. 37-38, 45-46 and 48 (D. Md. Aug. 14, 2025) (Dear Colleague Letter contradicted binding precedent in the Fourth Circuit, was arbitrary and capricious, and was a "final agency action [that] is subject to [judicial] review" where the Letter "supplements a statute, adopts a new position inconsistent with existing regulations, or otherwise effects a substantive change in existing law or policy") (internal citation omitted); *see also* 34 C.F.R. §§ 100.7(d) and 100.8.

As the Department is aware, the Supreme Court granted certiorari in *West Virginia v. B.P.J.*, Case No. 24-43, 2025 WL 1829164, at *1 (U.S. July 3, 2025), and *Little v. Hecox*, No. 24-38, 2025 WL 1829165, at *1 (U.S. July 3, 2025), which together concern whether Title IX and the Equal Protection Clause prevent states from segregating school sports teams based on biological sex assigned at birth. We expect that the Supreme Court will decide these cases in the first half of 2026. In its LOF, the Department expressed its view that the Supreme Court will consider in these cases "among other things, whether *Bostock* extends to Title IX . . . ." LOF, at p. 16 n. 9. We agree that those decisions are likely to provide greater clarity as to the issues in this investigation, including possibly whether and to what extent the *Grimm* court's interpretation of Title IX will apply going forward. Accordingly, we request that the Department defer any enforcement action and any changes to PWCS's federal funding until the Supreme Court decides *B.P.J.* and *Little.*

Finally, the Department has placed PWCS in a catch-22: agree to key terms that expose the district to potential liability or risk federal funding. Federal grants are an important source of funding in PWCS. In FY25, aside from funding for the National School Lunch Program, a

majority of federal money PWCS goes to three programs: Title VI programs for children with disabilities; Title I remedial and intervention programs for economically disadvantaged elementary students; and Head Start preschool programs. PWCS does not received federal funds tied directly to Title IX.

PWCS is fully committed to complying with all laws, including Title IX, while serving the needs of the students and parents within the school division. We respectfully ask the Department to reconsider whether this matter can be resolved through further dialogue, without the need for an enforcement action or litigation.

Sincerely yours,

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