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TO: Superintendents, School Boards, Private School Owners, Charter School Governing Boards

FROM: Manny Diaz, Jr. 
Commissioner of Education

DATE: July 28, 2022

SUBJECT: Response to Federal Guidance Documents on the Meaning of Sex Discrimination under Title IX and Related Statutes

As you may know, the United States Department of Education (USDOE) and the United States Department of Agriculture (USDA) recently issued guidance documents purporting to clarify the meaning of sex discrimination under Title IX of the Education Amendments of 1972; the Food and Nutrition Act of 2008, as amended, Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. § 2011 et seq.); and related implementing regulations.¹ These guidance documents interpret discrimination on the basis of sex to include discrimination on the basis of sexual orientation and gender identity in light of *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). In so doing, this guidance attempts to vastly expand the application of Title IX and related statutes and regulations. In addition, without consulting the Florida Department of Education (the Department), the Florida Department of Agriculture and Consumer Services (FDACS) recently communicated with Florida schools suggesting that they should comply with the USDA guidance.

The purpose of this memorandum is to make you aware that the sub-regulatory “guidance” documents issued by the USDOE and USDA are not binding law, do not create any new legal obligations, and should not be treated as governing law. Indeed, the USDOE has even acknowledged in litigation that its guidance document is not binding or enforceable. *See State of Tennessee v. U.S. Dep’t of Educ.*, No. 3:21-cv-308, at 26 (E.D. Tenn. July 15, 2022) (noting the USDOE’s contention that “the challenged guidance documents are non-binding interpretations that ‘simply inform the public of the agencies’ interpretation of Titles VII and IX, without purporting to alter obligations thereunder” and that “the guidance documents expressly state

¹ The relevant documents are “Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in light of *Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 21, 2021),” “Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update,” “Revised Nondiscrimination Statement and ‘And Justice for All’ Posters; Timelines and Guidance for Implementation,” and “Questions and Answers Related to CRD 01-2022 Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update.”

they do not have the force of law”). As such, you should not treat the USDOE or USDA guidance documents as binding or otherwise modify your practices or procedures based on these documents. Specifically, for example, nothing in these guidance documents requires you to give biological males who identify as female access to female bathrooms, locker rooms, or dorms; to assign biological males who identify as female to female rooms on school field trips; or to allow biological males who identify as female to compete on female sports teams. To the extent that you do any of these things, you jeopardize the safety and wellbeing of Florida students and risk violating Florida law. *See, e.g.*, Fla. Stat. § 1006.205(3)(c) (“Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex.”). For the same reason, you should also disregard any suggestion from FDACS that you must comply with the USDOE or USDA guidance, including any suggestion to post “And Justice For All” posters in your schools, as doing so may create a conflict with Florida law.

The Department will not stand idly by as federal agencies attempt to impose a sexual ideology on Florida schools that risk the health, safety, and welfare of Florida students. Working with the State Board of Education, the Department will continue to develop rules to implement and uphold Florida law. The Department will do everything in its power to protect the wellbeing of all Florida students and to vindicate the right of all parents to know what takes place in their child’s classroom. We trust that you will join us in this effort.