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Joint Statement of the Office of the Attorney General and the State Education Department Regarding Transgender Students' Rights

Our offices have received numerous inquiries from school district officials and organizations regarding the application of Executive Order (EO) 14190 of January 29, 2025 and 14201 of February 5, 2025 purporting to restrict K-12 schools from supporting transgender students' social transition and their access to athletics. We write to inform you that these EOs do not affect the rights of transgender students and individuals in New York's public schools.

The EOs restrict the meaning of "sex" in Title IX to exclude gender identity. The President cannot do that unilaterally. This would require an act of Congress—or, at minimum, notice-and-comment rulemaking. As previously observed by the State Education Department, these presidential statements of policy are legally ineffective.

Additionally, State law continues to offer robust protections for transgender students, including the right to use facilities (such as restrooms and locker rooms) and to participate on athletic teams that align with their gender identity. Unlawful discrimination against transgender students includes asking questions about their gender identity and assigned sex at birth and refusing to use their requested name or pronouns. Notably, a federal court decision identified in the February 5, 2025 EO explicitly recognized, in enjoining a 2024 regulation, that the injunction did not "limit[] the ability of any school to ... otherwise comply with applicable state or local laws or rules regarding" transgender students.

We understand that presidential threats to withhold funding are intimidating. But they are also beyond the President's authority. "[T]he Attorney General cannot pursue the policy objectives of the executive branch through the power of the purse or the arm of local law enforcement" (*City of Chicago v. Barr*, 961 F3d 882, 887 [7th Cir 2020]). The President, in other words, may not arrogate to himself the power of Congress or otherwise circumvent appropriate legal process.

Our offices are committed to upholding the Gender Expression Non-Discrimination Act (GENDA), an "act pertaining to common schools" (Education Law § 306 [1]). School districts must continue to follow State law, and the State Education Department and Office of the Attorney General stand behind districts and educators who uphold our State's commitment to equal educational opportunities for all students.