CARROLL
Independent School District

D. Cameron Bryan, Board President
Lane Ledbetter, Ed.D., Superintendent

August 5, 2024

Via email transmission
Brian Aurelio, Attorney
Tiffany Gray, Senior Attorney
Office for Civil Rights
U.S. Department of Education
1201 Elm Street, 10th Floor
Dallas, Texas 75270

Re: Carroll Independent School District Proposed Resolution Agreement in OCR Case Nos. 06-21-1300, 06-21-1301, 06-21-1302, and 06-22-1397

Dear Mr. Aurelio and Ms. Gray,

Please accept this correspondence on behalf of Carroll Independent School District (Carroll ISD or the District) in connection with the proposed Resolution Agreement in OCR Case Nos. 06-21-1300, 06-21-1301, 06-21-1302, and 06-22-1397. We have repeatedly asked you to share your factual findings with us regarding this matter so that we could, in good faith, evaluate them on behalf of Carroll ISD and the community we serve. Despite that earnest request, you have allowed the clock to run out on this time period.

As well, several issues have arisen since OCR proposed the Resolution Agreement that require a response from your office. We address them below:

1. **A federal court has enjoined the Department of Education and the Office of Civil Rights from taking action against Carroll ISD.**

In *Carroll Independent School District v. United States Department of Education, et al.*, Civil Action No. 4:24:-cv-00461-O, Judge Reed O'Connor enjoined you "from implementing, enacting, enforcing, or taking any action in any manner to enforce the Final Rule[1] against Carroll ISD." The Court further enjoined you from:

[1] *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474 (Apr. 29, 2024) (to be codified at 34 C.F.R. § 106 on August 1, 2024).

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- Enforcing the Final Rule's novel standard for unlawful sex-based harassment and a recipient's liability for sex discrimination, including 34 C.F.R. §§ 106.2 and 106.44(f)(1), as amended;
- Enforcing the Final Rule's requirement that a Title IX coordinator self-initiate certain grievance processes under 34 C.F.R. § 106.44(f)(1)(v), as amended;
- Enforcing the gag order requirement under 34 C.F.R. § 106.45(b)(5), as amended; and
- Requiring Plaintiff to enforce or apply these provisions and standards, or any policy implementing these provisions and standards, against its students, staff, or any other individual.

There is no doubt that these specific restrictions apply to your action in these cases.

2. Other federal courts recently entered similar injunctions.

In addition to our case above, the Judge O'Connor entered an order in *State of Texas v. Cardona*, Civil Action No. 4:23-cv-00604-O, filed in the United States District Court for the Northern District of Texas ("the Guidance Documents Order") that, among other things:

- Enjoins the United States Department of Education (DOE) from "enforcing the Guidance Documents[2] against Plaintiff and its respective schools, school boards, and other public, educationally based institutions";
- Enjoins DOE from "continuing or concluding any investigation" based on DOE's "interpretation in the Guidance Documents—as well as in any future agency guidance documents—that define "sex" to includes gender identity or sexual orientation in Title IX's prohibition against discrimination on the basis of sex" against Texas school districts; and
- Enjoins DOE and its agents "from using the Guidance Documents or asserting the Guidance Documents carry any weight—as well as any future agency guidance documents—in any litigation in Texas or against Plaintiff and its respective schools, school boards, and other public, educationally based institutions that is initiated following the date of this Order."

The Guidance Documents Order is binding on all "officers, agents, servants, employees, attorneys, or other persons in active concert or participation with" the DOE.

Next, in *State of Texas v. United States*, Civil Action No. 2:24-CV-86-Z, filed in the United States District Court for the Northern District of Texas, the Court enjoined you and others:

[2] The Order lists the DOE's June 22, 2021 Notice of Interpretation, the June 23, 2021 Dear Educator Letter, and the June 23, 2021 Fact Sheet as the "Guidance Documents."

> from implementing, enacting, enforcing, or taking any action in any manner to enforce the Final Rule, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474 (Apr. 29, 2024), which is scheduled to take effect on August 1, 2024.

Thus, not only did Carroll obtain specific relief relating to some of the cases you are investigating, other courts have provided relief, also applicable to Carroll ISD, regarding the Guidance Documents and the Final Rule.

Based on our review and knowledge of the cases, it appears these injunctions apply to at least one of the case numbers above. Please confirm, in writing, within five days of this letter, that OCR will close that case and stop all further action based on the Final Rule or the Guidance documents. If you do not, we will have no choice but to address this matter with Judge O'Connor.

3. **OCR has refused to provide us written findings to evaluate and will try to enforce any agreed resolution even if found we did nothing wrong.**

We have spent some time reviewing the OCR database available on the Department of Education's website. Specifically, we have reviewed proposed findings in other cases the OCR brought against school districts. From a cursory review of ten random case resolutions, we found that in at least six of them the OCR found insufficient evidence of the allegations, made no findings, or actually made negative findings. In each one, because the school district had agreed to a voluntary resolution, the OCR still made the district abide by the resolution agreement. From further review of other resolutions, it appears to us that this may have happened hundreds of times.

This is why we have repeatedly asked for your written factual findings and conclusions, all to no avail. In fact, OCR has confirmed that it will not provide written findings prior to the Carroll ISD entering into a Resolution Agreement. From Carroll ISD's perspective, the District is being forced to negotiate in the dark without the benefit of OCR's findings, which are necessary to make decisions and work towards a resolution. This is especially concerning to us given what we found about OCR's treatment of other districts in the same situation.

To that end, we, along with the Board's legal counsel, Tim Davis, and the District's legal counsel, Meredith Walker, met with you to discuss the Board's concerns and request for findings to allow the District to continue negotiations toward a Resolution Agreement. During that meeting,

you informed us that under OCR's Case Processing Manual (CPM), findings are not released prior to the signing of a Resolution Agreement.

I requested authority supporting OCR's stance in this regard beyond reliance on the CPM, which we have not received. Mr. Davis further requested that in writing, via email to you on May 31, 2024. To date, neither he nor I have received an acknowledgement of that email or a response of any kind.

While the CPM states OCR will issue a Letter of Findings after engaging in resolution discussions, Carroll ISD has not received any explanation as to why OCR negotiates in this manner beyond a cursory "that's how OCR handles this" because "that's what the CPM says." This is not sufficient and is not how negotiations towards resolution work in any other public or private sector. More importantly, OCR's stance to the contrary conflicts with § 305 of the CPM, which provides that the District will receive a Letter of Findings if it reaches an impasse with OCR.

In fact, under § 305 of the CPM, Carroll ISD is afforded more rights than during the resolution negotiation process. If the District and OCR reach an impasse, OCR is required to provide Carroll ISD with a Letter of Impending Enforcement Action, which must include the following:

- The allegation(s) opened for investigation;
- OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation;
- The findings of fact for each allegation investigated supported by any necessary explanation or analysis of the evidence on which the findings are based;
- Conclusions for each allegation that reference the relevant facts, the applicable statute(s) and regulation(s), and the appropriate legal standards;
- Notice that the Letter of Impending Enforcement Action is not intended and should not be construed to cover any other issue(s) regarding the recipient's compliance;
- Notice of the time limit on OCR's resolution process and the consequence of failure to reach agreement;
- A description of OCR's attempts to resolve the case;
- When a decision is made to defer final approval of any applications by the recipient for additional federal financial assistance . . . the letter also will provide notice of such possible deferral;
- A separate deferral letter will be prepared; and
- Title II letters will include the following language: "The complainant may have the right to file a private suit pursuant to Section 203 of the Americans with Disabilities Act, whether or not OCR finds a violation of Title II."

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While Carroll ISD wants to work towards a resolution with OCR, we have been forced to call an impasse because we have not been provided with OCR's Letter of Findings.

4. **The Supreme Court has held that the Department of Education and OCR's interpretation of federal statutes is no longer entitled to deference.**

Finally, we are further concerned that in light of the Supreme Court's holding in *Loper Bright Enterprises v. Raimondo*, 603 U.S.--- (2024), the ability of the OCR to bring enforcement actions based on its interpretations is legally speculative, if it even remains at all.

For that reason, please provide us with your rationale as to why any of these cases may proceed now that *Raimondo* held that your agency's interpretation is no longer entitled to deference.

CONCLUSION

Declaring an impasse seems entirely counterintuitive and counterproductive to the resolution process. Nevertheless, Carroll ISD has no other choice given the factors above. If OCR is not willing to provide the Board of Trustees with the information it needs to negotiate a Resolution Agreement, the District will await OCR's Letter of Impending Enforcement Action so that it has the information needed to move forward with fair and transparent negotiations.

Sincerely,

D. Cameron Bryan
President, Carroll ISD Board of Trustees

Lane Ledbetter, Ed.D.
Superintendent, Carroll ISD