

IMPORTANT NOTE: The resolution below was written by Mr. Brendan Shea, elected member for Ohio District 5 of the State Board of Education. It is posted in the September, 2022, public state board books here: <http://public.education.ohio.gov/StateBoardBooks/2022%20-%20Board%20Books/September%20-%202022/Member%20Proposed%20Resolutions/Resolution%20to%20Support%20Parents,%20Schools,%20and%20Districts%20in%20Rejecting%20Harmful,%20Coercive,%20and%20Burdensome%20Gender%20Identity%20Policies%20-%20Shea.pdf> . Typically, member-proposed resolutions are presented to the other board members at a current monthly meeting and voted on at the next meeting, thus a board vote on Mr. Shea’s resolution is anticipated on October 12, 2022.

RESOLUTION TO SUPPORT PARENTS, SCHOOLS, AND DISTRICTS IN REJECTING HARMFUL, COERCIVE, AND BURDENSOME GENDER IDENTITY POLICIES

The concept of education rests on the notion that there are things we can know. There are objective facts, even objective truths.

Biological sex is one such objective, scientific fact. A human male has an x and a y chromosome and a reproductive system ordered toward impregnation. A human female has two x chromosomes and a reproductive system ordered toward conceiving and bearing children.

Sex is not arbitrarily “assigned” at birth but rather identifies an unchangeable fact. There are observable, quantifiable, and immutable differences between males and females. The reality of biological sex can no more be altered than can the reality that two plus two equals four.

Denying the reality of biological sex destroys foundational truths upon which education rests and irreparably damages children.

Desiring to protect these foundations, to safeguard the wellbeing of children, and to support parents, schools and districts in doing the same, The State Board of Education (the "Board") hereby adopts the following Resolution:

WHEREAS Title IX of the Education Amendments of 1972 was enacted into law to ensure that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance"; and

WHEREAS original and existing Title IX regulations acknowledge "physiological differences between the male and female sexes"; and

WHEREAS on June 23, 2022, the U.S. Department of Education released proposed changes to Title IX regulations that would contradict the plain language of the law; and

WHEREAS the proposed regulations would prohibit schools that receive federal funds, including public, charter, private, and parochial schools, from “adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with their gender identity,” thereby compelling schools to deny biological reality; and

WHEREAS under the proposed rules, actions such as a student or staff member using a child’s legal name and biological pronouns rather than the child-selected preferred name and pronouns could be deemed a form of “sex-based harassment,” subjecting schools and staff to civil litigation and loss of federal funds; and

WHEREAS the proposed regulations would require that K-12 schools socially transition minor children to a different gender without requiring parental notification or involvement; and

WHEREAS Ohio law and the United State Constitution and legal precedent recognize the right of parents to direct the education, upbringing, and physical and mental health of their children; and

WHEREAS for many parents the nature of the human person created by God male and female is a deeply held religious belief; and

WHEREAS children are harmed when parents are barred from making decisions to protect their child’s physical, mental, and spiritual well-being; and

WHEREAS a high percentage of children who are permitted to socially transition will then pursue medical and surgical interventions which have irreversible, life-altering consequences for school age children, interrupt a child’s healthy growth and development, and come with significant risks, including loss of bone density, infertility, cognitive impairment, dangerous blood clots, cardiovascular disease, and cancer; and

WHEREAS under the proposed rules, schools would be required to grant access to sex-separate restroom and locker room facilities based on gender identity rather than on biological sex, which would place girls and women at increased risk for harassment and sexual assault by males who claim a female identity; and

WHEREAS the USDOE proposed regulations pertaining to athletics would require sports teams to be based on gender identity rather than biological sex, forcing women and girls to compete on an unfair basis against males for athletic opportunities and scholarships; and

WHEREAS in guidance issued May 5, 2022 and in a rule promulgated on June 14, 2022, the U.S. Department of Agriculture announced that it will interpret the prohibition on sex discrimination found in Title IX and the Food and Nutrition Act of 2008 to include discrimination based on gender identity; and

WHEREAS approximately 100,000 Ohio public schools, nonprofit private schools, and residential childcare institutions could now be forced to choose between adopting gender identity policies or foregoing federal funding to provide subsidized free or reduced-price meals to the more than 516,000 Ohio children who qualify; and

WHEREAS the Board acknowledges the pain experienced by those suffering with gender dysphoria; and

WHEREAS the appropriate course of action to pursue for students experiencing symptoms of gender dysphoria is treatment delivered by parent-selected mental health professionals; now, therefore, be it

RESOLVED, that the State Board of Education declares its unequivocal opposition to the proposed regulatory changes released by the U.S. Department of Education on June 23, 2022; and

BE IT FURTHER RESOLVED that the Board supports the lawsuit filed by Ohio Attorney General Dave Yost and 21 other state attorneys general seeking to invalidate the newly enacted Department of Agriculture rules that tie continued receipt of federal nutritional assistance and other funding subject to Title IX to the adoption of gender identity policies; and

BE IT FURTHER RESOLVED that the State Board of Education directs the acting Superintendent of Public Instruction to issue, within fourteen calendar days of the passage of this resolution, a letter, subject to the approval of the president of the Board, to every Ohio school district and every Ohio school or institution receiving Federal funds indicating that the Ohio Department of Education:

- opposes the proposed regulatory changes released by the U.S. Department of Education on June 23, 2022;
- considers the applicable USDOE guidance documents as without legal force and effect and, therefore, non-binding and unenforceable at this time; and therefore,
- urges districts not to amend local policies or procedures based on these guidance documents; and

BE IT FURTHER RESOLVED that the Board calls upon the General Assembly to assist local districts in combatting this federal overreach by proactively approving stopgap funding of necessary programs should the proposed regulations take effect; and

BE IT FURTHER RESOLVED that the Board calls upon the General Assembly to safeguard the rights of parents and the wellbeing of children by requiring that schools and districts disclose information to parents whenever their child claims a discordant gender identity, questions their gender identity, requests alternative names or pronouns, or otherwise indicates mental or emotional distress about their gender identity; and

BE IT FURTHER RESOLVED that the Board calls upon the General Assembly to protect the rights and safety of women and girls by prohibiting schools and districts from allowing biological males on female sports teams or in female privacy facilities; and

BE IT FURTHER RESOLVED that with this action the State Board of Education stands resolutely with parents, schools, and districts in rejecting harmful, coercive, and burdensome gender identity policies, procedures, and regulations.