

United States Senate

WASHINGTON, DC 20510

March 10, 2017

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

We write to you today to express our outrage at your decision to revoke the joint U.S. Department of Education (“the Department”) and U.S. Department of Justice guidance on transgender students’ rights under Title IX of the Education Amendments of 1972 (“Title IX”). This guidance was issued at the request of school districts, colleges and universities, students, and parents to explain the scope of protections afforded to transgender students and to clarify the obligation Title IX places on schools to provide a safe and supportive learning environment for transgender students. While transgender students continue to be protected under Title IX and other laws from discrimination and harassment, revoking the guidance has caused confusion and chaos as schools struggle to understand how to comply with obligations under Title IX. Earlier this week, the U.S. Supreme Court sent a case on transgender rights under Title IX back to the Fourth Circuit to reconsider given your decision to revoke the transgender guidance.

According to news reports, after apparently having substantial misgivings about the decision, you nonetheless succumbed to pressure from outside groups and others in the Administration and agreed to revoke the guidance despite having determined that doing so could jeopardize transgender students’ access to education free of harassment, bullying, and discrimination.¹ The suggestion that the Department jeopardized the health or well-being of any student because of political pressure is extremely alarming.

By revoking the transgender guidance, you have put the safety and well-being of transgender students at risk. In a statement defending your decision, you argued that protections for transgender students are “best solved at the state and local level” rather than at the federal level because schools “can find- and in many cases have found- solutions that protect all students.” Contrary to your beliefs, there is an abundance of evidence that schools do not always create safe learning environments that allow transgender students to attend classes and participate in school activities free from discrimination and harassment. Heartbreakingly, more than a third of

¹ See, e.g.: Peters, J.W., & Davis, J.H., New York Times, (Feb, 22, 2017), *Trump Rescinds Rules on Bathrooms for Transgender Students* (<https://www.nytimes.com/2017/02/22/us/politics/devos-sessions-transgender-students-rights.html>); & Emma, C., Politico, (Feb, 22, 2017), *Spicer denies Cabinet feud over transgender student protections*, (<http://www.politico.com/story/2017/02/trump-transgender-students-jeff-sessions-betsy-devos-235265>).

transgender students report being the subject of harassment or bullying in school.² Sixty percent of transgender youth report being forced to use bathrooms inconsistent with their gender identity.³ And shockingly, about half of transgender children have seriously contemplated suicide, while one-quarter report attempting suicide over their lifetimes.⁴ These students deserve every effort to protect them.

Not only does revoking the transgender guidance send a shameful message, but the Dear Colleague letter replacing it, and your comments about the issue, are severely misleading. It is a key Constitutional principle that States may not opt out of or modify federal civil rights laws – including Title IX. The rights and protections granted by Congress to students under Title IX are rights granted to all Americans, including transgender students, and cannot be overturned, dismantled, or vetoed by the States.⁵ And, yet this Administration describing transgender students' rights under the law as “best solved at the state and local level,” which is echoed in the new guidance that says “there must be due regard for the primary role of the States and local school districts,” further confuses the role the Department is required by Congress to play. It is the role of the federal government, including your Department, to vigorously enforce and protect these rights for every student, in every school, in every state in the country.

In addition to the confusing and misleading statements that incorrectly state the federal role in enforcing Title IX, the vague language in the new guidance has sown confusion among parents, teachers, and administrators about how to comply with the law. The revoked guidance plainly stated “a school must treat transgender students consistent with their gender identity.” The guidance also specifically detailed ways that schools should treat transgender students to comply with legal obligations under the law regarding bullying and harassment, names and pronouns, privacy and education records, sex-segregated activities and facilities including athletics, housing, fraternities and sororities, single-sex classes and schools, and school facilities.

The new guidance you issued provides no explanation of transgender students' rights or schools' obligations under Title IX or any examples for schools and teachers. The new guidance supplies only vague statements that the Department will “explore every appropriate opportunity to protect all students and to encourage civility in our classrooms” and that “[a]ll schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment.” The new guidance fails to offer examples, guidance, or instruction on how to comply with these goals or how the Department will evaluate whether schools are in compliance with their legal obligations under Title IX, which includes preventing discrimination against transgender students. The recent decision by the Supreme Court to send a case about the scope of transgender rights under Title IX for reconsideration at the circuit level further adds to the confusion.

² Human Rights Campaign, *Supporting and Caring for our Gender-Expansive Youth*, (<http://assets.hrc.org/files/assets/resources/Gender-expansive-youth-report-final.pdf>).

³ Kosciw et al., GLSEN, (2016), *The 2015 National School Climate Survey*, (<http://www.glsen.org/article/2015-national-school-climate-survey>).

⁴ Grossman, A.H. & D'Augelli, A.R., (2007), *Transgender Youth and Life-Threatening Behaviors*, (http://yspp.org/about_suicide/statistics.htm).

⁵ U.S. Constitution, Article VI, Clause II.

Given the serious concerns about the revocation of the guidance, we request a briefing to clarify and better understand how the Department intends to enforce civil rights laws including Title IX, the impact of revoking the guidance on students and schools, and the process by which the decision to revoke the guidance was made. Additionally, please respond in writing to the following questions no later than Friday, March 24:

1. In your statement on the new Title IX guidance you said that you “consider protecting all students, including LGBTQ students, not only a key priority for the Department, but for every school in America. We owe all students a commitment to ensure they have access to a learning environment that is free of discrimination, bullying and harassment.” Please state with specificity the ways in which the learning environment for transgender students is made safer by the revocation of the guidance.
2. How is the withdrawal of transgender guidance consistent with the “federal mandate” and “moral obligation” you describe all schools as having to protect students from bullying, harassment, and discrimination?
3. Do you believe that states and localities may choose whether to comply with federal civil rights laws?
4. The new Title IX guidance states that “in this context, there must be due regard for the primary role of the States and local school districts in establishing education policy.”
 - a. Is the Department’s interpretation of the law that states and localities may individually decide whether Title IX protects transgender students?
 - b. What is the “context” referenced in the new Title IX guidance?
5. Please provide examples of situations that, in the Department’s opinion, would violate transgender students’ rights under Title IX.
6. Will the Department’s Office for Civil Rights (OCR) consider a school in compliance with Title IX if it chooses to rely on the guidance provided in the Dear Colleague Letter on Transgender Students dated May 13, 2016?
7. In your statement about the new Title IX guidance you say “[a]t my direction, the Department's Office for Civil Rights remains committed to investigating all claims of discrimination, bullying and harassment against those who are most vulnerable in our schools.”
 - a. How will OCR evaluate claims of bullying and harassment by transgender students?
 - b. What federal law will OCR look to in order to understand schools’ obligations to protect transgender students?
 - c. If a transgender student files a complaint with OCR because the student is being forced to use a bathroom that is inconsistent with their gender identity, will OCR investigate the complaint under Title IX and take action to remedy the violation of that student’s rights?

8. The new Title IX guidance states that the Department “will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms.” What specific steps will the Department take to protect transgender students and encourage civility? Is it the Department’s position that encouragement of civility is sufficient to protect transgender students’ civil rights?
9. Please describe the process by which the U.S. Departments of Education and Justice made the joint decision to revoke the transgender guidance.
 - a. Who made the decision to revoke the transgender guidance?
 - b. What offices within the Department were consulted before the guidance was revoked?
 - c. What communication did the Department receive from the Department of Justice regarding this matter?
10. Did the Department consult with any advocates for transgender people before revoking the guidance?
11. Did the Department consult with any non-governmental entity before revoking the guidance? Please state with specificity what organizations and individuals were consulted, on what date were they consulted, for what purpose they were consulted, and what documents or other information such persons provided to the Department regarding the revocation of this guidance.

All students – no matter their race, religion, disability, country of origin, sex, sexual orientation, or gender identity – deserve to have their civil rights vigorously enforced and access to education free from discrimination fiercely protected. We will never stop fighting for our students to have a safe environment to learn, and we expect no less from the U.S. Department of Education. For questions about these requests, please contact Carly Rush or Jake Cornett with the Health, Education, Labor, and Pensions Committee at 202-224-0767.

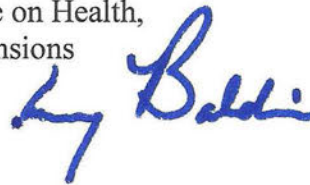
Sincerely,



Patty Murray
United States Senator
Ranking Member, Committee on Health,
Education, Labor, and Pensions



Al Franken
United States Senator



Tammy Baldwin
United States Senator

A handwritten signature in blue ink, appearing to read "Sheldon Whitehouse".

Sheldon Whitehouse
United States Senator

A handwritten signature in blue ink, appearing to read "Elizabeth Warren".

Elizabeth Warren
United States Senator

A handwritten signature in blue ink, appearing to read "Margaret Wood Hassan".

Margaret Wood Hassan
United States Senator