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# United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

DAVID P. CLEARY, STAFF DIRECTOR  
EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR

<http://help.senate.gov>

July 7, 2020

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

Dear Secretary DeVos

We write to urge you to review all actions taken by the Department of Education (the Department) under your tenure that undermine rights to be free from discrimination based on sexual orientation or gender identity. On June 15, 2020, the U.S. Supreme Court held in *Bostock v. Clayton County, Georgia* that an employer cannot fire a person because of their sexual orientation or gender identity. This decision affirms that the sex discrimination protections of Title VII of the Civil Rights Act of 1964 (Title VII) apply to the LGBTQIA+ community. The textual analysis that the Supreme Court relied on in concluding that discrimination on the basis of sex includes discrimination motivated by gender identity or sexual orientation applies with equal force to Title IX of the Education Amendments of 1972 (Title IX) and its protections against sex discrimination in federally funded educational programs and activities.

In stark contrast to this reasoning, your Department has taken a number of harmful actions to diminish protections for people based on their sexual orientation or gender identity. Throughout your time at the Department, you have advanced an agenda to weaken Title IX rights and protections for students, including protections for gay, bisexual, and transgender students. By affirming unequivocally that a person's LGBTQIA+ identity is "inextricably bound up with sex," the Court made clear these rights are protected under federal civil rights laws' prohibition of sex discrimination. The Department should revisit and end all its efforts to undermine LGBTQIA+ students' rights, including issuing guidance hindering students' ability to use bathrooms and play on sports teams according to their gender identity<sup>1</sup>, limiting the Office for Civil Rights' enforcement of civil rights laws for transgender students<sup>2</sup>, and promulgating rules that lessen protections against sexual assault and harassment, which disproportionately affect LGBTQIA+

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<sup>1</sup> [https://www.nytimes.com/2017/02/22/us/politics/devos-sessions-transgender-students-rights.html?\\_r=0](https://www.nytimes.com/2017/02/22/us/politics/devos-sessions-transgender-students-rights.html?_r=0)

<sup>2</sup> <https://www.documentcloud.org/documents/3866816-OCR-Instructions-to-the-Field-Re-Transgender.html>;  
<http://apps.washingtonpost.com/g/documents/local/trump-administrations-guidance-to-office-for-civil-rights-on-transgender-student-complaints/2474/>

students.<sup>3</sup> Students deserve the same protections from discrimination as workers, particularly as courts have used Title VII to help determine the meaning of “sex” for Title IX purposes.<sup>4</sup>

Rather than advance a discriminatory agenda, your Department should work toward protecting the civil rights of all students. In light of the Court’s decision, we ask you immediately review all Department rules, guidance, and policies and rescind any that undermine rights based on sexual orientation and gender identity and, in their place, adopt guidance clarifying Title IX’s protection against discrimination based on sexual orientation and gender identity, consistent with the Supreme Court’s recent ruling.

Sincerely,

*/s/ Patty Murray*

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PATTY MURRAY  
Ranking Member  
U.S. Senate Committee on Health,  
Education, Labor, and Pensions

*/s/ Tammy Baldwin*

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TAMMY BALDWIN  
U.S. Senator

*/s/ Bernard Sanders*

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BERNARD SANDERS  
U.S. Senator

*/s/ Tina Smith*

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TINA SMITH  
U.S. Senator

*/s/ Tim Kaine*

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TIM KAINE  
U.S. Senator

*/s/ Robert P. Casey, Jr.*

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ROBERT P. CASEY, JR.  
U.S. Senator

*/s/ Christopher Murphy*

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CHRISTOPHER MURPHY  
U.S. Senator

*/s/ Margaret Wood Hassan*

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MARGARET WOOD HASSAN  
U.S. Senator

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<sup>3</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

<sup>4</sup>

[https://scholar.google.com/scholar\\_case?case=3022724147282446357&q=Doe+by+and+through+Doe+v.+Boyer+to+Area+School+District&hl=en&as\\_sdt=20006](https://scholar.google.com/scholar_case?case=3022724147282446357&q=Doe+by+and+through+Doe+v.+Boyer+to+Area+School+District&hl=en&as_sdt=20006)

*/s/ Jacky Rosen*

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JACKY ROSEN  
U.S. Senator

*/s/ Elizabeth Warren*

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ELIZABETH WARREN  
U.S. Senator