

February 28, 2018

The Honorable Betsy DeVos
U.S. Department of Education
400 Maryland Ave. SE
Washington, DC 20202

Dear Secretary DeVos:

On behalf of the undersigned education, LGBTQ, and other civil rights and research organizations, we write to express our grave concerns regarding reports that the Department of Education's Office for Civil Rights (OCR) is automatically dismissing complaints from transgender students who have faced discrimination in accessing restrooms.

The Department of Education is obligated to ensure equal access to educational opportunities and fully enforce civil rights protections for all students, including Title IX of the Education Amendments of 1972. Yet the Department turned its back on some of the most vulnerable students last year with the withdrawal of important guidance that clarified schools' obligations to protect transgender students under Title IX. While your own statement at the time assured that OCR "remains committed to investigating *all* claims of discrimination, bullying, and harassment,"¹ (emphasis added), according to a Department spokesperson, it is now the policy of OCR to reject without investigation all complaints from transgender students who are barred from using restrooms consistent with their gender identity.

Federal appeals courts in the Sixth and Seventh Circuits have ruled that transgender students are indeed covered under Title IX.² Additional federal circuit courts have ruled that analogous federal civil rights statutes that prohibit sex discrimination also prohibit discrimination on the basis of gender identity.³ The Department of Education is responsible for enforcing these decisions and accepting complaints that allege civil rights violations.

Far too many transgender young people experience discrimination at school that impedes their ability to learn and succeed. GLSEN's National School Climate Survey found that LGBTQ students who experienced such discrimination were more than three times as likely to have missed school in the past month, had lower GPAs, and had lower self-esteem and higher levels of depression.⁴ Additionally, a recent study conducted by the Human Rights Campaign Foundation and the University of Connecticut of 12,000 LGBTQ youth indicates that more than a third of transgender students try to never use the bathroom during the school day—often because of a lack of access to facilities that match their gender identity and a lack of safety in facilities that don't. This poses serious health risks to students, including kidney infections,

¹ <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-issues-statement-new-title-ix-guidance>

² *Dodds v. Dept. of Education*, 845 F.3d 217 (6th Cir. 2016); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1038 (7th Cir. 2017).

³ See *Schwenk v. Hartford*, 204 F.3d 1187, 1200 (9th Cir. 2000), *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000), *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004), *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005), and *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011).

⁴ <https://www.glsen.org/article/2015-national-school-climate-survey>

dehydration, and urinary tract infections, and it compromises their educational opportunities due to being absent or dropping out of school as a way to avoid humiliation and pain.

OCR's refusal to even investigate these complaints conflicts with the law in multiple jurisdictions, further emboldens those who seek to discriminate, and betrays the vulnerable students you have sworn to protect. We urge you to reconsider and correct this injustice immediately.

If you have any questions, please contact Jennifer Pike Bailey, Human Rights Campaign (Jennifer.Bailey@hrc.org), Harper Jean Tobin, National Center for Transgender Equality (hjtobin@transequality.org), or Nathan Smith, GLSEN (Nathan.Smith@glsen.org).

Sincerely,

National Organizations

Advocates for Youth
African American Ministers In Action
American Association of University Women (AAUW)
American Atheists
American Civil Liberties Union
American Conference of Cantors
American Federation of Teachers
American Psychological Association
Asian Pacific American Labor Alliance, AFL-CIO
Athlete Ally
Autistic Self Advocacy Network
The Center for American Progress
CenterLink: The Community of LGBT Centers
Children's Defense Fund
Council for Native Hawaiian Advancement (CNHA)
Council of Administrators of Special Education
Council of Parent Attorneys and Advocates
Democrats for Education Reform
Disability Rights Education & Defense Fund
The Education Trust
End Rape on Campus
Family Equality Council
Feminist Majority Foundation
FORGE, Inc.
Gender Spectrum
Girls Inc.
GLMA: Health Professionals Advancing LGBT Equality
GLSEN
Japanese American Citizens League
Know Your IX a Project of Advocates for Youth
Lambda Legal

Lawyers' Committee for Civil Rights Under Law (National)
The Leadership Conference on Civil and Human Rights
Los Angeles LGBT Center
Men of Reform Judaism
Movement Advancement Project
NAACP Legal Defense and Educational Fund, Inc.
National Alliance to End Sexual Violence
National Association of School Psychologists
National Association of Secondary School Principals
National Black Justice Coalition
National Center for Learning Disabilities
National Center for Transgender Equality
National Center for Youth Law
National Council of Jewish Women
National Education Association
National Equality Action Team (NEAT)
National LGBTQ Task Force
National Queer Asian Pacific Islander Alliance (NQAPIA)
National Women's Law Center
New Leaders
OCA - Asian Pacific American Advocates
Outserve - SLDN
People For the American Way
Pride at Work
Public Justice, P.C.
School Social Work Association of America
Sexuality Information and Education Council of the United States (SIECUS)
Transcend Legal
Transgender Law Center
True Colors Fund
Union for Reform Judaism
URGE: Unite for Reproductive & Gender Equity
Women of Reform Judaism

State/Local Organizations

Arizona Trans Youth and Parent Organization
Atlanta Women for Equality
Basic Rights Oregon
Bisexual Organizing Project - BOP
Education Law Center - PA
Equality Alabama
Equality California
Equality North Carolina
Equality Texas
Forum for Equality Louisiana
Georgia Equality

Girls Inc. of Southeast Wisconsin
Girls Inc. of the Washington, DC Metropolitan Area
Girls Inc. of TN Valley
Girls Inc. at YWCA Nashville & Middle Tennessee
Girls Inc. of Carpinteria
Girls Inc. of Dothan
Girls Inc. of Fort Smith
Girls Inc. of Greater Haverhill
Girls Inc. of Greater Los Angeles
Girls Inc. of Holyoke
Girls Inc. of Jacksonville
Girls Inc. of Long Island
Girls Inc. of Lynn
Girls Inc. of Monroe County
Girls Inc. of Orange County
Girls Inc. of Santa Fe
Girls Inc. of Sioux City
Girls Inc. of the Central Coast
Girls Inc. of the Greater Capital Region
Girls Inc. of the Pacific Northwest
Girls Inc. of Wayne County
Gladys Allen Brigham Com Ctr & Girls Inc. of the Berkshires
Louisiana Trans Advocates
Mazzoni Center