

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,"<sup>1</sup> (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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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,

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

<sup>2</sup> *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).

<sup>3</sup> 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).

<sup>4</sup> <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