

Secretary Betsy DeVos

ID: LFG-2017-0003

United States Department of Education

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Washington, D.C 20202

[Betsy.DeVos@ed.gov](mailto:Betsy.DeVos@ed.gov)

Sent via: Electronic mail

October 30<sup>th</sup>, 2017

Re: Opposition to the withdrawal of the May 13<sup>th</sup>, 2016 guidance letter on equal access for transgender students

Secretary Betsy DeVos,

I wanted to make sure that you know that myself and that many other citizens of the United States are extremely disappointed with the United States Department of Education for withdrawing its May 13<sup>th</sup>, 2016 guidance letter pertaining to equal access for students that identify as being transgender in public educational institutions.<sup>1</sup> While withdrawing the May 13<sup>th</sup>, 2016 guidance letter through political interference does not change the law as to this issue, I am hoping that the United States Department of Education will put the May 13<sup>th</sup>, 2016 guidance letter back in place or another letter that will replace the letter because I believe that the United States needs to prioritize treating our posterity in a humane and in a dignified way. Even if we had a scenario where the law was unclear as to this issue, I believe that the United States should always protect our posterity from harassment and discrimination in all aspects of public educational institutions. Students have a right to be themselves and I am hoping that the United States Department of Education will work towards helping make sure that is a reality without political interference.

I believe that the move by the United States Department of Education to withdraw its guidance letter on equal access for transgender students does make the United States look stupid and unstable. But regardless as to the United States Department of Education withdrawing its guidance letter regarding equal access for transgender students, Title IX of the Education Amendments of 1972 already prohibits sex discrimination against individuals in public educational institutions. Title IX of the Education Amendments of 1972 states that: "[n]o 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." Title IX prohibits discrimination and harassment "on the basis of sex" and forbids students from being discriminated and harassed on the basis of their gender identity, transgendered/transsexual status and even in regard as to their nonconformity status. See *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008); and *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 152 (N.D.N.Y. 2011).

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<sup>1</sup> Even if the majority of citizens of the United States did not support equal access for transgender students in public educational institutions, that would still not change the law on this issue. The United States is a constitutional republic and we are a nation of law and order. A person's religious, spiritual or moral views or opinions cannot be used to take away or to deny the rights that a group of people have.

There have been some political figures that have advocated for the rights of transgender students to be dissolved through their own bigotry. For example, some political figures have and are advocating for students that are transgender losing their rights to use the same facilities that other students that are of the same lived sex that the student who is transgender is. Some political figures are and have been trying to force transgender individuals to only go to facilities in which matches their birth sex instead of their lived sex in public educational institutions. Many of those proposed laws have failed however in the event that any one of those proposed bills do become a law, I hope that you understand that the newly enacted law would be unconstitutional and would be advocating for sex discrimination to occur against students that identify as being transgender. Public educational institutions do not have a legal right to deny equal access to transgender students on the basis as to the lived sex of the transgender student because I believe that is sex discrimination. See *Hart v. Lew*, 973 F. Supp. 2d 561, 581 (D. Md. 2013). I also believe that doing so would also be a constitutional violation of a transgender student's right to be treated equal to other students that are of the same lived sex that the student that is transgender identifies as.

It is extremely sad and concerning to see this even being an issue in the United States. It is more saddening and concerning to see how politics is allowed and has been allowed to interfere with upholding the civil and the constitutional rights that a group of people have.<sup>2</sup> The civil and the constitutional rights of people should never be decided by any political party because for too long the United States has had political parties specifically advocating for either one civil or constitutional right in which a group of people already have while completely overlooking the other parts in which would be deemed as being too conservative or too liberal. The civil and the constitutional rights of the people are supposed to be unalienable and no right-wing or left-wing entity or political figure has the right to take it away from the people.<sup>3</sup>

The United States is supposed to be the "land of the free" to an extent. With that being said, I believe that the United States needs to encourage all students to be free to be themselves at all points as they are students in public educational institutions. Public schools, including public universities, are supposed to be places where students are allowed to be themselves and where freethought, self-identity and self-expression are praised. Too often do we have public educational institutions at every level trying to teach children, young adults and adults what to think instead of how to think or what to be instead of how to choose the way in which the student should be. Public educational institutions have too often targeted students that they perceive to be different from the rest. I believe that the withdrawal of the May 13<sup>th</sup>, 2016 guidance letter on equal access for transgender students will make public educational institutions more willing to deny equal access to transgender students by forcing transgender students to live as their birth sex instead of their lived sex. This certainly will advocate for violations of Title IX

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<sup>2</sup> The United States is a constitutional republic and we are a nation of law and order.

<sup>3</sup> I would also like to add that the federal judiciary should never be political and it is imperative for the United States Senate Committee on the Judiciary to be extremely careful in approving the nominations of all federal judiciary candidates that have been nominated by the President of the United States. The United States cannot afford to have political federal judges in office ignoring the law by and through political influence. It is extremely easy for a federal judiciary candidate to get into office but it is extremely hard to get federal judges with an extremely bad procedural history out of office. That is something that the Congress of the United States needs to change.

violations and even constitutional violations to be persistent in public educational institutions and this cannot and should not be tolerated. As a country, we are better than that.

In conclusion, I want it to be clear that I do not believe that it was a wise decision for the United States Department of Education to repeal the May 13<sup>th</sup>, 2016 guidance letter of equal access for transgender students when a new presidential administration came into power. It appears as if some political figures wanted the United States Department of Education to withdraw that opinion as to this issue and that is concerning and saddening. Politics should have no bearing on whether or not the civil or the constitutional rights as to a group of people will or will not be upheld. Political influence should never be allowed to change the legal opinion of the United States Department of Education on ways that public educational institutions can uphold the rights of a minority group of people. I surely hope that you will put the guidance letter back in place because it is greatly needed in today's climate. Even if the United States Department of Education will not put the May 13<sup>th</sup>, 2016 dear colleague letter on equal access for transgender students as an official legal opinion, I surely hope that the United States Department of Education will be an advocate as for equal access for all students, including transgender students.



Respectfully,

Isaiah X. Smith<sup>4</sup>

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