

United States Senate

WASHINGTON, DC 20510

May 2, 2016

The Honorable John King
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary King:

As senators committed to ensuring that *all* students—including lesbian, gay, bisexual, and transgender (LGBT) students—have access to a public education in an environment free from discrimination, we are writing to request that the Department of Education explain the scope of protections afforded to LGBT students under Title IX of the Education Amendments of 1972 (Title IX) and clarify that state laws requiring discrimination against LGBT students run afoul of Title IX and jeopardize states' and school districts' continued receipt of federal funding.

Title IX prohibits discrimination “on the basis of sex”¹ in any educational program or activity that receives federal funding—including public primary and secondary schools, public colleges and universities, and private schools and universities that accept student loans or federal funds. While Title IX is widely known for increasing women’s and girls’ participation in sports, this landmark civil rights law guards against sex discrimination in all aspects of educational opportunity, including harassment, housing, admissions and recruiting, and financial aid. Virtually all public schools and public and private colleges and universities in the country receive federal funding from the Department of Education and other federal agencies. Institutions that fall short of their obligations under Title IX risk the suspension or termination of federal funding.

Consistent with caselaw in the area of employment discrimination, both your Department and the Department of Justice (DOJ) have clarified that Title IX’s prohibition on sex discrimination prohibits discrimination on the basis of gender identity. The Department of Education issued guidance clarifying that Title IX prohibits gender-based harassment of students,² including discrimination against transgender and gender non-conforming students,³ and failure to respect transgender students’ gender identity when operating single-sex classes.⁴ Both DOJ and the Department of Education have applied this interpretation of Title IX to support transgender students challenging school policies banning them from using the restroom or locker room that

¹ 20 U.S.C. § 1681.

² *Dear Colleague Letter: Harassment and Bullying*, U.S. Department Of Education, 8 (October 26, 2010), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

³ *Questions and Answers on Title IX and Sexual Violence*, U.S. Department Of Education, 5 (April 29, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁴ *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*, U.S. Department Of Education, (December 25, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

corresponds with their gender identity.⁵ DOJ explained that “[t]reating a student adversely because the sex assigned to him at birth does not match his gender identity is literally discrimination ‘on the basis of sex.’ . . . Prohibiting a transgender male student from using boys’ restrooms, when other non-transgender male students face no such restriction, deprives him not only of equal educational opportunity but also ‘of equal status, respect, and dignity.’”⁶ Recently, the U.S. Court of Appeals for the Fourth Circuit agreed with the administration’s interpretation that Title IX protects the rights of transgender students to use sex segregated facilities that are consistent with their gender identity—a significant victory.⁷ The Departments’ interpretation and enforcement of Title IX is consistent with courts’ and federal agencies’ interpretations of other sex discrimination statutes, including Title VII.

However, despite the important steps the federal government has taken to secure equality for transgender and gender non-conforming students, state legislators are pursuing policies that seek to halt this progress. North Carolina’s recent enactment of House Bill 2, a discriminatory measure that forbids transgender students appropriate access to bathrooms and locker rooms, provoked a swift backlash from business leaders, the National Basketball Association, the National Collegiate Athletic Association, and even the leading Republican candidate for president. Nonetheless, state legislators in Tennessee, Kansas, South Carolina, and Minnesota continued to push similar measures.

In the face of ongoing legislative assaults on LGBT students, and transgender students in particular, we remain concerned that the Department of Education has not yet further clarified that schools permitting discrimination against LGBT students to continue unabated risk losing their eligibility for federal funds. Although the Department of Education has stated that Title IX covers gender identity discrimination, including for single-sex classrooms and sexual harassment, it has not yet provided specific guidance to schools on how these protections apply in the myriad other circumstances experienced by transgender students in schools. Last week, the *New York Times* reported that the Department of Education has drafted guidance for school administrators on their obligations to LGBT students under Title IX.⁸ We urge the Department to release that guidance now.

We strongly believe that it is our responsibility—not just as senators, but as adults—to protect our children and young people, and to help them flourish. We applaud and thank the Department of Education, as well as the Department of Justice, for sharing that goal, and for their commitment to equality and work in support of LGBT students. We respectfully request that the Department complete that work by issuing clear, comprehensive guidance.

⁵ See Brief for the United States as *Amici Curiae* Supporting Appellant, *G.G. v. Gloucester County School Board*, No. 15-2056 (4th Cir. Oct. 28, 2015); Statement of Interest of the United States, *Tooley v. Van Buren Public Schools*, No. 2:14-cv-13466-AC-DRG (E.D. Mich. Feb. 24, 2015); Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, <https://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

⁶ Brief for the United States as *Amici Curiae* Supporting Appellant, *G.G. v. Gloucester County School Board*, No. 15-2056, 14 (4th Cir. Oct. 28, 2015) (internal citations omitted).

⁷ *G.G. v. Gloucester County School Board*, No. 15-2056 (4th Cir. Apr. 19, 2016).

⁸ Editorial, *Transgender Bathroom Hysteria, Cont’d.*, N.Y. TIMES, Apr. 18, 2016, at A20.

Sincerely,



AL FRANKEN
United States Senator



TAMMY BALDWIN
United States Senator



HARRY REID
United States Senator



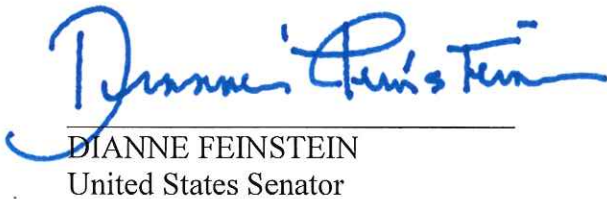
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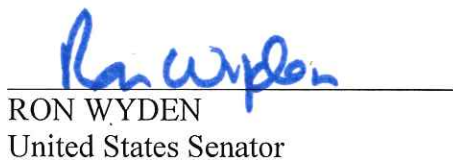
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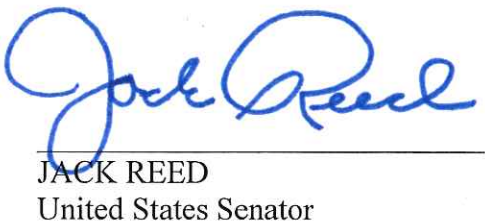
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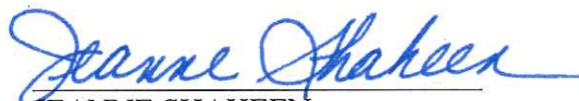
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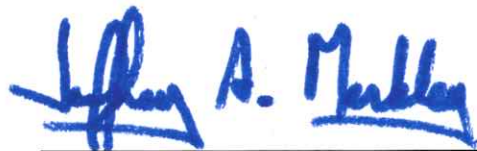
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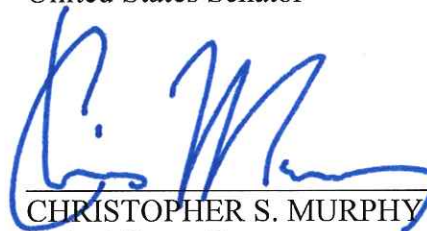
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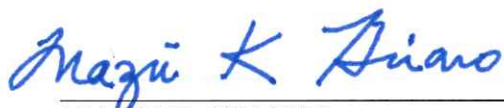
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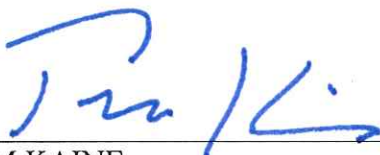
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