

United States Senate

WASHINGTON, DC 20510

June 27, 2017

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

Dear Secretary DeVos:

We are extraordinarily disappointed and alarmed by recent actions you and your staff have taken that have diminished the U.S. Department of Education's ("the Department") enforcement of federal civil rights laws. Your testimony in front of Congress, your continued association with groups with records of supporting discrimination, and two memos written by the Acting Assistant Secretary for Civil Rights, have reemphasized longstanding concerns about your dedication to the idea that all students, no matter their race, religion, disability, country of origin, sex, sexual orientation, or gender identity, have a right to receive an education free from discrimination.

You claim to support civil rights and oppose discrimination, but your actions belie your assurances. During your confirmation hearing, and during recent testimony, you gave confusing and contradictory answers about the federal role in protecting students' civil rights and whether you believe that all schools receiving federal funds should follow civil rights laws. In testimony before the Senate Health, Education, Labor, and Pensions Committee, you attempted to distance yourself from your family's giving to organizations such as the Family Research Council, which promote intolerant views of lesbian, gay, bisexual, transgender, and gender non-conforming Americans and others. Yet, on June 15, 2017, the Family Research Council participated in an official event on engaging fathers in students' education at the Department.¹ You have also appointed staff who have fought against the Department's 2011 Title IX Guidance clarifying schools' responsibility to address campus sexual assault and against expanded protections for survivors of sexual violence on campus.² These actions appear to reinforce the Trump Administration's efforts to curtail civil rights protections for students and families.

Recently your Acting Assistant Secretary for Civil Rights, Candice Jackson, sent a memo to Regional Directors of the Office for Civil Rights ("OCR") scaling back and narrowing the way OCR will approach civil rights enforcement.³ Over the past decade, OCR has maximized its impact and ability to enforce civil rights laws by taking a systematic approach, gathering

¹ Benjamin Wermund, *LGBT Groups Slam Ed for Including Anti-Gay Groups in 'Fathers' Event*, Politico: Morning Education, June 16, 2017, <http://www.politico.com/tipsheets/morning-education/2017/06/16/new-marching-orders-for-civil-rights-probes-220882>.

² Sarah Brown, *Koch Foundation Officer, a Critic of Title IX Guidance, Will Join Education Dept.*, The Chronicle of Higher Education, June 6, 2017, <http://www.chronicle.com/article/Koch-Foundation-Officer-a/240272>.

³ Memorandum from Candice Jackson on OCR Instructions to the Field re Scope of Complaints, June 2017, <https://www.propublica.org/documents/item/3863019-doc00742420170609111824.html>.

multiple years of data, and looking to see whether the discrimination, harassment, or other prohibited behavior raised by a complainant was indicative of a broader problem affecting other students or school community members. The new field memo instructs field investigators only to investigate “systematic” or “class-action” issues when they are raised directly in a complaint or at the discretion of the investigative team. Limiting use of the systematic approach may cause investigators to miss issues of pervasive discrimination or civil rights abuses.

The memo also announced that OCR is ending the longstanding practice of Department headquarters’ oversight of certain types of investigations. Previous Assistant Secretaries for Civil Rights have maintained oversight of specific types of cases to ensure uniform approaches to complicated cases across regional offices in the context of changing and developing legal doctrine. We are deeply concerned that without consistent oversight from headquarters, complainants will receive different levels of support from the Department based on where they live, and civil rights enforcement will vary based on the preference of individual Regional Directors and investigative teams.

According to the field memo and comments by Department staff, the changes outlined are designed to allow investigative staff to resolve complaints within a reasonable time-frame.⁴ We share the goal of ensuring that complainants receive a swift and timely answer, which is why we fought to ensure increases in OCR’s last two budgets. These increases enabled OCR to increase its workforce to 582 full time employees, up by more than 40 over 2015. Unfortunately, the Administration’s budget request proposes to reduce OCR funding, which will lead to a loss of staff and, as a result, an increase in the backlog of cases. Closing cases quickly at the expense of the quality of the investigation is not in the long-term interests of the complainants and impedes students, teachers, and families in receiving just resolutions. Rather than abandon a systematic approach, we strongly urge you to support increased funding for OCR’s budget to allow the office to hire additional personnel to swiftly resolve complaints.

We are also extremely disappointed in the Department’s failure to take actions to protect transgender students. More than a third of transgender students report being the subject of harassment or bullying in school,⁵ sixty percent of transgender youth report being forced to use bathrooms inconsistent with their gender identity,⁶ and half of transgender children have seriously contemplated suicide.⁷ Despite these shocking statistics, on February 22, 2017, the Department withdrew joint guidance on transgender students’ rights under Title IX of the Education Amendments of 1972 (“Title IX”).

⁴ *Id.*; Press Statement, Full Statement from Elizabeth Hill, Press Secretary for the Dept. of Education, June 2017, <https://www.documentcloud.org/documents/3866792-Us-Ed-Full-Statement.html>.

⁵ Human Rights Campaign, Lessons from the Human Rights Campaign’s Youth Survey, at 10, 2016, http://assets.hrc.org/files/assets/resources/Gender-expansive-youth-report-final.pdf?_ga=1.190006760.278772764.1488067609.

⁶ Kosciw et al., GLSEN, The 2015 National School Climate Survey, at xvii, 2016, https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report_0.pdf.

⁷ Statistics about Youth Suicide, Youth Suicide Prevention Program, last accessed June 18, 2017, http://yspp.org/about_suicide/statistics.htm.

On March 10, six Senators wrote you expressing outrage at that decision and asking how you intend to enforce civil rights protections for transgender students. While you have not yet answered that letter, recent steps by the Department suggest you will not act to protect transgender students. In fact, the Department has already abandoned its defense of some students who have experienced discrimination or harassment by dismissing or closing at least two cases involving transgender students and withdrawing previous findings of discrimination against the school districts.⁸

Furthermore, a second memo sent by Acting Assistant Secretary Jackson to OCR Regional Directors on June 6, 2017, now permits investigators to dismiss cases relating to discrimination against transgender students.⁹ The memo suggests the Department will allow investigators to determine whether and how they will protect transgender students, including their right to use the facilities corresponding with their gender identities. It is the responsibility of the federal government and the Department to investigate and address civil rights violations at schools and on campuses across the country. The meaning of Title IX, and the protections afforded students, should not be left to the individual interpretations of investigative teams and the preferences of Regional Directors. Put plainly, these actions are inconsistent with OCR's responsibilities under Title IX and the implementing regulations.

In light of these extremely troubling actions taken by the Department and others in the Trump Administration, the U.S. Commission on Civil Rights ("the Commission"), a bipartisan, independent agency created by Congress to monitor national civil rights policy and enforcement, took the unusual step of announcing a two-year, multi-agency investigation into whether the Department and other agencies' proposed budgets, staffing cuts, and programmatic priorities have increased the risk of discrimination, including discrimination based on race, age, sex, disability, sexual orientation, and gender identity.¹⁰ The Commission's statement cites "grave concerns about continuing signals from the current Administration [...] that the protection and fulfillment of civil rights of all persons will not be prioritized" and expresses dismay at the Trump Administration's "dangerous reduction of civil rights enforcement." The Commission explicitly raised concerns about the Education Department's "proposed budget calls for reducing staffing [...] at the department's Office for Civil Rights," noting that "these proposed cuts are particularly troubling in light of Education Secretary Betsy DeVos' repeated refusal [...] to commit that the Department would enforce federal civil rights laws."¹¹ We share these concerns and expect the Department to fully cooperate with the Commission's investigation.

⁸ Emma Brown, *Education Dept. closes transgender student cases as it pushes to scale back civil rights investigations*, Washington Post, June 17, 2017, http://www.washingtonpost.com/local/education/education-dept-closes-transgender-student-cases-as-it-pushes-to-scale-back-civil-rights-investigations/2017/06/17/08e10de2-5367-11e7-91eb-9611861a988f_story.html?utm_term=.364284c01118.

⁹ Memorandum from Candice Jackson on OCR Instructions to the Field re Complaints Involving Transgender Students, June 6, 2017, <http://apps.washingtonpost.com/g/documents/local/trump-administrations-guidance-to-office-for-civil-rights-on-transgender-student-complaints/2474/>.

¹⁰ Statement from the U.S. Commission on Civil Rights, *The U.S. Commission on Civil Rights Expresses Concern Regarding Federal Civil Rights Enforcement Efficacy and Priorities*, June 16, 2017, https://www.nytimes.com/interactive/2017/06/16/us/politics/document-Commission-Statement-Efficacy-of-Federal-Civil.html?_r=0.

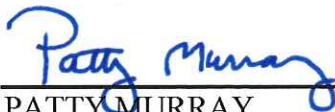
¹¹ *Id.*

In order to fully understand the impact of recent policy and civil rights investigatory and enforcement changes at the Department and OCR, please provide the following information and documents by July 11, 2017:

1. A list of all open OCR cases involving a transgender student as of January 30, 2017, disaggregated by the nature of the complaint, and the current status of each of these cases.
2. A list of all open OCR cases involving sexual assault or sexual harassment as of January 30, 2017 and the current status of those cases.
3. A list of all cases OCR has closed or dismissed between January 1, 2017, and today, and the specific reason each case was closed.
4. A complete, un-redacted copy of the manual used by investigators.
5. An explanation of how the Department intends to ensure that OCR investigators are making determinations about transgender students' rights based on binding legal precedent in their region.
6. An answer as to whether the Department will continue to post all resolution agreements online.
7. Any and all memoranda, analyses, or other communications discussing the rationale for, and impact of, policy changes affecting civil rights enforcement by the Department.
8. Any and all memoranda, analyses, or other communications discussing the rationale for, and impact of, proposed budget cuts in OCR.
9. A list of all metrics that will be used by the Department to assess effectiveness of civil rights enforcement.

There is no more serious responsibility of the Department than to ensure consistent, vigorous enforcement of civil rights laws and protections for all students. The Department must fulfill that responsibility and work tirelessly to promote equality, opportunity, and an environment free of discrimination for all our children. For questions about these requests, please contact Carly Rush or Jake Cornett with the Senate Health, Education, Labor, and Pensions Committee at 202-224-0767.

Sincerely,



PATTY MURRAY
United States Senator




RICHARD J. DURBIN
United States Senator



PATRICK LEAHY
United States Senator



DIANNE FEINSTEIN
United States Senator



RON WYDEN
United States Senator



JACK REED
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ROBERT MENENDEZ
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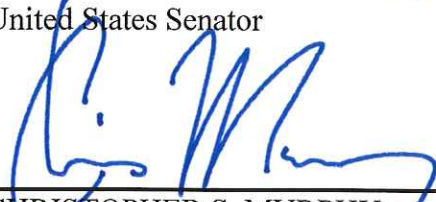
RICHARD BLUMENTHAL
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BRIAN SCHATZ
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TAMMY BALDWIN
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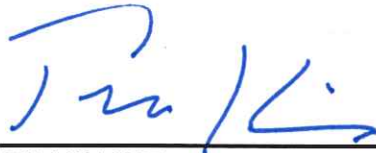
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