



AMERICAN  
PSYCHOLOGICAL  
ASSOCIATION

April 6, 2018

The Honorable Betsy DeVos  
Secretary  
Department of Education  
400 Maryland Avenue, SE  
Washington, DC 20202

Dear Secretary DeVos:

On behalf of the American Psychological Association (APA) and the Society for the Psychology of Sexual Orientation and Gender Diversity (Division 44 of APA), we write to express our grave concerns about the Department of Education's (DoED) decision to withdraw guidance documents that prohibited discrimination "on the basis of sex" in Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and its implementing regulations requiring access to sex-segregated facilities based on gender identity.<sup>i</sup> The practical implication of this decision is that the DoED Office of Civil Rights (OCR) will no longer investigate or take action on discrimination complaints from transgender students who are barred from using restrooms consistent with their gender identity.<sup>ii</sup> We call upon DoED to reverse this decision.

APA is the largest scientific and professional organization representing psychology in the United States and is the world's largest association of psychologists. Comprising researchers, educators, clinicians, consultants, and students, our association works to advance the creation, communication, and application of psychological knowledge to benefit society and improve people's lives. APA has a longstanding commitment to ending public policies and practices that discriminate based on sex, sexual orientation and gender identity.<sup>iii iv</sup> The Society for the Psychology of Sexual Orientation and Gender Diversity represents and advocates for the diversity of human sexual orientations by supporting research, promoting relevant education, and affecting professional and public policy.

Standards of care within the health professions indicate that it may be medically and therapeutically indicated for some transgender and other gender diverse children and adolescents to transition from one gender to another. One aspect of such transition is social transition, in which the individual begins to take a social gender role that is different than their culturally assigned gender. This transition will include the use of sex-segregated facilities, activities, and programs that are consistent with their gender identity, including, but not limited to, bathrooms, locker rooms, sports teams, and classroom activities. APA recommends that school administrators create safe environments for transgender students that support their social transition.<sup>v</sup> Yet research demonstrates that transgender students experience significant discrimination in accessing public accommodations. Sixty percent of transgender students report they had been required to use the bathroom or locker room of their legal sex instead of their expressed gender and 43 percent report feeling unsafe in school because of how they expressed their gender.<sup>vi</sup> These discriminatory experiences are likely to be stressful to students. Such stress is associated with negative physical and mental health outcomes and is likely to interfere with students' ability to succeed in school.

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The Department's revised interpretation of Title IX and OCR's refusal to investigate complaints about bathroom access filed by transgender students run counter to the laws of multiple jurisdictions and emboldens individuals and entities who would unlawfully discriminate against students based on gender expression. Federal appeals courts in the Sixth and Seventh Circuits have ruled that transgender students are indeed covered under Title IX.<sup>vii</sup> Additional federal circuit courts have ruled that analogous federal civil rights statutes that prohibit sex discrimination also prohibit discrimination based on gender identity.<sup>viii</sup> APA, along with two of our divisions, published best practices based on the latest research on the needs of sexual and gender minority students to assist school administrators foster safe and supportive school environments for gender diverse students and comply with federal civil rights protections for transgender students.<sup>ix</sup>

Denying transgender students federal Title IX anti-discrimination protections may exacerbate gender identity-based stigma and discrimination in public schools.<sup>x</sup> Therefore, we urge DoED to return to the practice of investigating complaints by transgender students involving unlawful discrimination.

Thank you for considering our concerns. If we may provide any further information, please contact Leo Rennie, MPA, in the APA Public Interest Government Relations Office at 202-682-5110 or [lrennie@apa.org](mailto:lrennie@apa.org).

Sincerely,



Clinton W. Anderson, PhD  
Interim Executive Director  
Public Interest Directorate



David Pantalone, PhD  
President  
Society for the Society for the Psychology of  
Sexual Orientation and Gender Diversity

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<sup>i</sup> Battle, S., & Wheeler, T., II. (2017, February 22). Dear Colleague Letter on Transgender Students [Letter written February 22, 2017 to Colleague]. Retrieved from <https://www.justice.gov/opa/press-release/file/941551/download>

<sup>ii</sup> BuzzFeed News. (2018). The education department official says it will reject transgender student bathroom complaints. February 12, 2018. Retrieved from [https://www.buzzfeed.com/dominicholden/edu-dept-trans-student-bathrooms?utm\\_term=.wdBW3n9z8#.bin8P7a2v](https://www.buzzfeed.com/dominicholden/edu-dept-trans-student-bathrooms?utm_term=.wdBW3n9z8#.bin8P7a2v)

<sup>iii</sup> American Psychological Association. (2007). Opposing discriminatory legislation and initiatives aimed at lesbian, gay and bisexual persons. Retrieved from <http://www.apa.org/about/policy/discriminatory-legislation.pdf>

<sup>iv</sup> American Psychological Association. (2008). Transgender, gender identity, and gender expression non-discrimination. Retrieved from <http://www.apa.org/about/policy/transgender.pdf>

<sup>v</sup> American Psychological Association & National Association of School Psychologists. (2015). Resolution on gender and sexual orientation diversity in children and adolescents in schools. Retrieved from <http://www.apa.org/pi/lgbt/resources/about-diversity-schools.pdf>

<sup>vi</sup> Kosciw, J. G. et.al. (2016). The 2015 national school climate survey: the experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools. New York: GLSEN. Retrieved from [https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report\\_0.pdf](https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report_0.pdf)

<sup>vii</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>viii</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).

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<sup>x</sup> American Psychological Association, Division 16 and Division 44. (2015). Supporting transgender and gender diverse students in schools: key recommendations for school administrators. Retrieved from <http://www.apa.org/pi/lgbt/programs/safe-supportive/lgbt/school-administrators.pdf>

<sup>x</sup>Porta et al. (2017). “Kicked out”: LGBTQ youths’ bathroom experiences and preferences. *Journal of Adolescence*, 56, 107-112. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5346479/pdf/nihms-852681.pdf>