

May 18, 2016

The Honorable Loretta Lynch
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable John King
Secretary of Education
United States Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Dear Attorney General Lynch and Secretary King,

On May 13, 2016, the United States Department of Education (“ED”) and Department of Justice (“DOJ”) released significant guidance regarding the ED and DOJ’s interpretation of Title IX’s prohibition of sex discrimination in educational programs and activities operated by recipients of Federal financial aid. This guidance expands the ED and DOJ’s interpretations of sex discrimination to include not only an individual’s biological sex, but also an individual’s internal sense of gender.

Specifically, the guidance states that:

“As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations. The Departments treat a student’s gender identity as the student’s sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity.”

Considering this guidance, please:

1. Clarify specifically all actions that the ED and DOJ, jointly or separately, will take against or regarding a teacher, school administrator, educator, school contractor, or person volunteering at a school who does not comply with this guidance;
2. Detail whether the ED and DOJ will recognize or accommodate rights of conscience and privacy in an individual’s or institution’s non-compliance with this guidance;

3. List all actions that the ED and DOJ, jointly or separately, will take against or regarding a school, school district, or state in which a teacher, school administrator, educator, school contractor, or person volunteering at a school does not comply with this guidance;
4. Detail all actions that a school, teacher, school contractor, and person volunteering must take to be in compliance with this guidance;
5. Confirm whether ED and DOJ consider this guidance to be legally binding and whether ED and DOJ will report this guidance to Congress;
6. Delineate the statutory authority under which ED and DOJ issued this guidance;
7. Explain why schools must disregard the privacy, “discomfort,” and emotional strain imposed on other students during use of bathroom, showering, and changing facilities and overnight accommodations as these schools comply with this guidance; and
8. Explain to what extent teachers, guidance counselors, school administrators, and parents and guardians of students were consulted regarding the implementation and effect of this guidance.

We expect a reply by May 30, 2016, and we look forward to your response.

Sincerely,

MARK WALKER (NC-06)
Member of Congress