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Congress of the United States
House of Representatives
Washington, DC 20515-2504

May 13, 2016

President Barack Obama
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Dear President Obama:

We write today to express our concern regarding the U.S. Departments of Justice (DOJ) and Education's (ED) joint "significant guidance" letter, which mischaracterizes the scope and application of Title IX. As guidance, the publication purports to merely interpret the law, as passed by Congress; however, this guidance expands the meaning of the statute passed by Congress and fails to provide support from the Education Amendments of 1972 (Title IX) for many of the obligations imposed on educators and educational institutions.

This guidance states, "Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance. This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status." While we strongly condemn discrimination, especially at educational institutions, this guidance is blatantly false. Nowhere in Title IX is there reference to gender identity, nor is there any indication that Title IX was intended to provide elevated protections based on subjective characteristics like sexual orientation or gender identity. In fact, rather than providing protections, as Title IX was intended, enforcement of the significant guidance risks the privacy and safety of children at educational institutions throughout the country.

Far from offering support to schools seeking guidance on complying with federal law, this document gives the impression that ED and DOJ's reinterpretation of federal law requires schools to comply or risk losing federal funding under Title IX. It exceeds the authority of federal agencies to create policies that were not intended by the legislature and use guidance documents to attempt to compel compliance. ED and DOJ cannot point to statutory authority for the incorporation of sexual orientation and gender identity in its guidelines, and, therefore, should clarify that not adhering to the policies therein cannot be grounds for inquiry, investigation, adverse findings, or recession of federal funding.

These changes are a continued expansion of policies propagated by unelected officials that have generated significant attention and concern from our constituents. For example, on November 2, 2015, the full weight of the ED fell upon Dr. Daniel Cates, Superintendent of Township High School in District 211 of Palatine, Illinois, when the ED Office of Civil Rights ("OCR") issued Dr. Cates a letter stating the District discriminated against a student for denying him "access to the girls' locker rooms." The letter goes on to say,

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX. Therefore, OCR has

jurisdiction over this complaint.... Based on the specific facts and circumstances in this case, OCR concludes that the District, on the basis of sex, excluded [the student] from participation in and denied [him] the benefits of its education program, provided [him] different benefits or benefits in a different manner, subjected her to different rules of behavior, and subjected [him] to different treatment in violation of the Title IX regulation, at 34 C.F.R § 106.31.

Federal agencies do not have authority to reinterpret federal law. The purpose of guidance is to simply interpret rules, not to create new law or binding statements of policy, especially when that policy does not comport with the intent and language of legislation passed by Congress. That this guidance, however, was published without regard to notice and comment procedures indicates an understanding that following proper procedure would have been met with strong resistance from the American public who have substantive objections to ED's evolving position. The policies set forth in the joint guidance contradict First and Fourth Amendment protections, which Title IX was never intended to threaten.

This action by the DOJ and ED is the definition of extreme overreach by the federal government, and this reinterpretation of Title IX is fundamentally flawed. It is based on the notion that an Administration has the authority to redefine the law, that private spaces in schools are best governed by the federal government and not state and local school boards, and that denying federal funds on this basis protects the rights of children. Mandates such as this do not improve access or level playing fields; they only treat our children as pawns in this extreme political agenda. For these reasons, we ask that the Administration immediately withdraw this significant guidance on Title IX.

Sincerely,



Vicky Hartzler
Member of Congress



Joseph R. Pitts
Member of Congress



John Fleming, M.D.
Member of Congress

Cc: Catherine E. Lhamon, Assistant Secretary for Civil Rights, U.S. Department of Education and Vanita Gupta, Principle Deputy Assistant Attorney General for Civil Rights, U.S. Department of Justice