



COMMENT OF
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REGARDING TITLE IX GUIDANCE PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION AND
THE U.S. DEPARTMENT OF JUSTICE
KANSAS STATE BOARD OF EDUCATION

JUNE 14, 2016

Thank you for providing an opportunity for the public to provide comment and input to the Kansas State Board of Education as it considers the issue of Guidance given by the U.S. Department of Justice and the U.S. Department of Education. That Guidance, issued on May 13, interprets existing protections against sex discrimination in federal education law, popularly known as Title IX. Consistent with existing legal precedent, the Guidance recognizes that discrimination against transgender students, including with respect to single-sex spaces and activities, constitutes sex discrimination. The Guidance also provides important information to school districts about best practices to protect transgender students from discrimination.

The American Civil Liberties Union (ACLU) of Kansas, a membership organization dedicated to defending and strengthening the constitutional liberties afforded to every resident of Kansas, supports the principles contained within the federal Guidance. **We strongly urge the Kansas State Board of Education to embrace the recommendations and best practices found in the Guidance**—for reasons of student safety, privacy, equality, existing law related to sex discrimination, and the financial consequences of non-compliance.

- **The federal Guidance provides important clarity, but does *not* represent *any* change in the law or to the obligations of schools that receives federal financial assistance.**
The Guidance issued on May 13 does provide important clarity to schools that receive federal financial assistance about their existing obligations under federal law to protect all students from sex discrimination, including transgender students. That clarity is important, and is a product of requests made by school districts across the country for a detailed guidance document. However, the Guidance represents *no* change from existing policy and does not alter *existing* obligations in any way. Title IX has long prohibited discrimination on the basis of sex, and federal courts and agencies have recognized that this includes protections for transgender students, including in single-sex spaces and activities. The Guidance explains that, under Title IX, transgender students cannot be barred from sex-segregated facilities, such as restrooms, that accord with their gender identity.
- **The federal Guidance is consistent and in compliance with federal court rulings related to Title IX and transgender students.**
The Guidance reiterates the U.S. Department of Education’s interpretation of Title IX, which the Department has been applying for years. The guidance affirms the position of those agencies with respect to Title IX and provides comprehensive examples for how schools can act to protect transgender students. This interpretation has been upheld by federal courts. The U.S. Court of Appeals for the Fourth Circuit held prior to the issuance of the guidance that the Department of Education’s interpretation of Title IX as prohibiting discrimination against transgender students

in single-sex spaces is reasonable and valid. *G.G. v. Gloucester Cty. Sch. Bd.*, -- F.3d --, 2016 WL 1567467, at *4 (4th Cir. 2016). These court rulings represent the only reasonable interpretation of Title IX given our current medical and legal understandings of the meaning of sex.

- **Following the federal Guidance will protect the safety and well-being of *all* students, prevents discrimination, and is consistent with actual practice in schools across the country.** Regardless of schools' legal obligations under Title IX, the experience of school districts across the country has shown that allowing students to use single-sex facilities that match their gender identity is the best approach to ensuring the safety and well-being of all students, both transgender and non-transgender alike.

Though there is at present increased attention on transgender students and legal protections for them, the reality is that transgender students have been attending our schools and going to the gender-appropriate facilities for decades without incident. Many schools and districts have taken steps to ensure that transgender students are treated with dignity and respect. These districts have not encountered difficulties with safety or privacy as a result.

- **Ending discrimination against transgender people, including discrimination with respect to restrooms and locker rooms, does not undermine anyone's privacy.** Expelling transgender people from communal space—and thus engaging in blatant discrimination—does nothing to protect peoples' privacy interests. In schools, businesses and elsewhere across the country, transgender people have been protected from discrimination in restrooms and locker rooms for years and in some cases, decades. There have been no disruptions, increases in public safety incidents, or invasions of privacy related to those protections. Contrary to some criticisms of the federal Guidance, it does not call for “letting boys into the girls' restroom” or vice versa—because transgender girls *are* girls and transgender boys *are* boys.

We simply cannot address privacy concerns by forcing transgender students into separate spaces and thereby sending the message to them that they are pariahs who should be ashamed of who they are and of their bodies. When it comes to locker rooms and other places of partial undress, people seeking additional privacy can access enclosed areas to avoid encountering others, such as restroom stalls or privacy curtains.

- **Discrimination against transgender people is rampant, dangerous, and must be ended.** Transgender people face pervasive discrimination in many aspects of their lives. For example, research shows that transgender people experience discrimination in employment and housing at rates that are wildly disparate from the total population. In addition, transgender people are much more likely to be victims of crime. Transgendered youth are much more likely to consider suicide, in part because of the pervasiveness of the discrimination they encounter. Although the policies impacted by federal Guidance can address only a small slice of the discrimination that transgender youth face, those policies are an important part of dismantling the discrimination encountered by these students. We all should have an interest in eliminating discrimination, especially in public accommodations.