

February 21, 2017

The Honorable Betsy DeVos
Secretary of Education of the United States
US Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary of Education DeVos,

I am writing in protest to the *Dear Colleague Letter on Transgender Students*. This letter was issued by the Obama administration to public schools on March 13, 2016 as a joint guidance letter (see attached) from the Office for Civil Rights of the U.S. Department of Education and the Civil Rights Division of the U.S. Department of Justice. I ask that the Department of Education, either individually or in conjunction with the Department of Justice, affirmatively revoke this guidance letter.

The purpose of this joint-guidance letter was to inform public schools of new guidelines on gender identity. The letter also stated public schools were obligated to implement these guidelines to ensure they “are complying with their legal obligations” to Title IX of the Education Amendments of 1972 (Title IX). According to the Departments, failure to comply with the guidelines results in the forfeiture of federal funds under Title IX.

The Departments also stated, “This guidance does not add requirements to applicable law.” I disagree. The Departments altered existing law through changes in policy to create a protected class under Title IX. The Departments used the Executive branch to amend a congressionally passed statute (20 U.S.C. § 1681(a)) to create gender identity as a protected class. Such action by the Departments is a clear violation of separation of powers.

Title IX states that:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance....” 20 U.S.C. § 1681(a).

The prohibition of sex discrimination is subject to a number of exceptions, including this one:

“Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.” 20 U.S.C. § 1686.

Based on those sections, the then-existing Department of Health, Education, and Welfare (predecessor to the Department of Education) promulgated the following rule, which President Gerald Ford approved on May 27, 1975:

“A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.” 34 C.F.R. § 106.33.

The terms “gender,” “gender identity,” and “transgender” do not appear anywhere in Title IX or its implementing rules. Title IX prohibits discrimination on the basis of sex. According to Title IX, requiring public school students to use the restroom or locker room consistent with their biology is not prohibited. The valid legal means to amend Title IX is congressional. It is wholly improper to use the executive branch or the courts to amend legislation.

I agree with the statement by Vice President Pence during the campaign that both he and President Trump “believe that the transgender bathroom issue can be resolved with common sense at the local level. Washington has no business intruding on the operation of our local schools.” Indeed, education is a matter that the U.S. Constitution leaves for each state to decide.

The American Family Association will begin an online petition, at www.AFA.net, urging citizens to support the revocation of the Obama administration’s joint guidance bathroom letter.

Again, I ask that the Department of Justice, either individually or in conjunction with the Department of Education, affirmatively revoke this guidance letter.

Sincerely,

A handwritten signature in black ink that reads "Tim Wildmon". The signature is written in a cursive, slightly slanted style.

Tim Wildmon