



NATIONAL CENTER FOR LESBIAN RIGHTS



March 30, 2016

Dear School Official,

We are writing to you as the leader of a public school district or public school in North Carolina. A bill recently passed by the North Carolina General Assembly, House Bill 2, purports to impose requirements on public schools that violate federal law and could subject your district to federal lawsuits, investigations, and loss of federal funding. House Bill 2 is the subject of ongoing litigation, and the North Carolina Department of Justice has declined to defend it in court.

We share the following information so that your school system is fully informed when making important decisions about how best to treat students and employees with dignity and respect. Allowing individuals to use restrooms and other facilities consistent with their gender identity is not only in the best interest of students, it is also required by federal law.

Discrimination against transgender students is harmful and counter to the educational mission of schools

Excluding transgender students from facilities that correspond to their gender identity is profoundly harmful. It sends a message to transgender students and their peers that there is something wrong with them and that they are not entitled to the same dignity as other students. Experience shows that when they are integrated into the school environment and provided equal treatment, there are not differences between their social and emotional development and that of their non-transgender peers.<sup>1</sup> Singling them, labeling them as different and disrupting peer relationships, however, undermines their ability to learn. Transgender students already experience high rates of bullying by peers and adults, and the stress of harassment and discrimination can lead to lower attendance and grades as well as depression, anxiety, and suicidality.<sup>2</sup>

We all care about privacy and safety in restrooms. Allowing transgender students to use restrooms appropriate for their gender identity does not jeopardize, but rather protects,

privacy and safety. North Carolina already has laws against harassing or invading others' privacy in restrooms. To the extent that any student, transgender or not, feels uncomfortable using a restroom with another student or wants additional privacy for any reason, private facilities may be made available upon request, so long as no student is *forced* into separate facilities.

Refusing to allow transgender students to use restrooms consistent with their gender identity violates federal anti-discrimination law, invites lawsuits and risks the loss of federal funding

House Bill 2 requires school districts to discriminate against transgender students, as well as transgender staff. Compliance with House Bill 2 creates serious legal and fiscal risks for public schools because it conflicts with federal laws, including Title IX of the Education Amendments of 1972. Title IX prohibits sex discrimination in federally-funded education programs.<sup>3</sup> The U.S. Departments of Justice and Education have stated repeatedly in guidance and court briefs that Title IX prohibits discrimination based on gender identity, including practices that bar students from using school restrooms and changing rooms consistent with their gender identity.<sup>4</sup> While Title IX permits schools to maintain gender-segregated facilities, it requires schools to give students access to those facilities on the basis of their gender identity, regardless of the gender they were assigned at birth. Numerous courts have also held that sex discrimination laws like Title IX protect transgender people.<sup>5</sup> School districts that have excluded students from facilities consistent with their gender identity have faced lawsuits in federal court and investigations by the Departments of Justice and Education.<sup>6</sup>

In addition, Title VII of the Civil Rights Act of 1964 prohibits sex discrimination by state and local government employers.<sup>7</sup> The U.S. Justice Department and Equal Employment Opportunity Commission (EEOC) have recognized that Title VII prohibits gender identity discrimination and requires employers to provide equal access to workplace restrooms and changing facilities consistent with an employee's gender identity.<sup>8</sup> Private employers have faced lawsuits for denying such restroom access to transgender employees, including by the EEOC,<sup>9</sup> and the Justice Department has also sued a state university for gender identity discrimination.<sup>10</sup> Federal courts have also held that discrimination against transgender individuals violates the Equal Protection Clause of the US Constitution.<sup>11</sup>

Thus, school districts in North Carolina that engage in discriminatory practices pursuant to House Bill 2 would violate federal law. While House Bill 2 includes no enforcement mechanisms, violations of Title IX and Title VII could result in federal litigation by students, employees, or the EEOC or Justice Department, as well as federal administrative investigations and potential loss of federal funding.

We hope this letter is helpful in addressing some of the questions and concerns raised by House Bill 2. We urge you to consult *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools* for information about how to provide a safe and supportive environment for all students and ensure compliance with federal laws and

regulations,<sup>12</sup> as well as the *Model District Policy on Transgender and Gender Nonconforming Students*.<sup>13</sup>

If you have any questions, please feel free to contact any of our organizations for assistance, or contact Harper Jean Tobin at [hjtobin@transequality.org](mailto:hjtobin@transequality.org) or (202) 642-4542.

Thank you for the work you do every day to ensure quality education for all.

Sincerely,

**Harper Jean Tobin**, Esq., Director of Policy, National Center for Transgender Equality  
**Christopher Brook**, Esq., Legal Director, ACLU of North Carolina  
**James Esseks**, Esq., Director, LGBT & HIV Project, American Civil Liberties Union  
**Dru Lévasseur**, Esq., Director, Transgender Rights Project, Lambda Legal  
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<sup>1</sup> Kristina Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 PEDIATRICS (2016).

<sup>2</sup> E.g., Sari L. Reisner et al., *Mental Health of Transgender Youth in Care at an Adolescent Urban Community Health Center*, 56 J. ADOLESCENT HEALTH 274 (Mar. 2015).

<sup>3</sup> 20 U.S.C. § 1681.

<sup>4</sup> E.g., Brief for the United States as Amicus Curiae, *G.G. v. Gloucester Cty. Sch. Bd.*, No. 15-2056 (4th Cir. Oct. 28, 2015); *Tooley v. Van Buren Pub. Sch.*, No. 2:14-cv-13466 (E.D. Mich.), Statement of Interest of the USA (Feb. 24, 2015); U.S. Dept. of Education, Office for Civil Rights, *Title IX Coordinators Guide* 15, 19, 21-22 (April 2015).

<sup>5</sup> E.g., *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000); *Rumble v. Fairview Health Serv.*, No. 14-cv-2037, 2015 WL 1197415 (D. Minn. Mar. 16, 2015); *Fabian v. Hosp. of Cent. Conn.*, No. 3:12-cv-1154, 2016 WL 1089178 (D. Conn. Mar. 18, 2016); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008); *Finkle v. Howard Cty., Md.*, 12 F. Supp. 3d 780 (D. Md. 2014).

<sup>6</sup> E.g., Finding Letter from Adele Rapport, Office for Civil Rights of U.S. Department of Education, to Daniel E. Cates, Township High School District 211 (Nov. 2, 2015); Resolution Letter from Anurima Bhargava, U.S. Department of Justice, & Arthur Zeidman, Office for Civil Rights of U.S. Department of Education, to Joel Shawn, Arcadia Unified School District (July 24, 2013); Resolution Letter from Arthur Zeidman, Office for Civil Rights of U.S. Department of Education, to John A. Garcia, Downey Unified School District (Oct. 14, 2013).

<sup>7</sup> 42 U.S.C. § 2000e-2.

<sup>8</sup> Attorney General Memorandum, Dec. 15, 2014, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*; *Lusardi v. McHugh*, E.E.O.C. App. No. 0120133395 (Apr. 1, 2015).

<sup>9</sup> *EEOC v. Deluxe Fin. Servs. Corp.*, (D. Minn. Civ. No. 0:15-cv-02646-ADM-SER, filed June 4, 2015, settled on January 20, 2016).

<sup>10</sup> *United States v. Se. Okla. State Univ.*, No. civ-15-324-c, 2015 WL 4606079 (W.D. Okla. Jul. 10, 2015).

<sup>11</sup> *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011).

<sup>12</sup> Asaf Orr & Joel Baum, *Schools in Transition: A Guide to Supporting Transgender Students in K-12 Schools* (2015), [https://www.nea.org/assets/docs/Schools\\_in\\_Transition\\_2015.pdf](https://www.nea.org/assets/docs/Schools_in_Transition_2015.pdf).

<sup>13</sup> Nat'l Ctr. for Transgender Equality & Gay, Lesbian & Straight Education Network, *Model School District Policy on Transgender and Gender Nonconforming Students* (2016), <http://www.transequality.org/sites/default/files/GLSEN%20Trans%20Model%20Policy%202016.pdf>.