

**Congress of the United States**  
**Washington, DC 20515**

June 22, 2014

Secretary Arne Duncan  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

Dear Secretary Duncan:

We write to you as the lead sponsors of the Student Non-Discrimination Act in Congress. As you know, this important legislation would establish a comprehensive, explicit prohibition, modeled on Title IX of the Education Amendments of 1972, against discrimination in all public elementary and secondary schools across the country based on a student's actual or perceived sexual orientation or gender identity. We are committed to continuing to work to move this legislation forward in Congress.

We appreciate the recent clarification from the Office for Civil Rights that, consistent with current court decisions,<sup>1</sup> Title IX protections against sex-based discrimination extend to discrimination based on gender identity and failure to conform to sex stereotypes. This clarification is an important step towards ensuring that transgender, gender non-conforming, lesbian, gay, and bisexual students have access to a safe and equal education.

We urge the Department of Education to make further clarification by developing guidance consistent with the law that clearly outlines now the appropriate treatment of transgender and gender non-conforming students under Title IX. Such guidance would inform schools of the measures needed to be in compliance with current law and existing obligations to transgender and gender non-conforming students. To be in compliance, and avoid costly, unnecessary litigation, schools need clear guidance on the practical application of non-discrimination laws to ensure that transgender students do not face a hostile environment, covering such issues as access to facilities, protecting student privacy, and the application of dress standards, among other topics.

In addition to providing schools with explicit guidance about their obligations, the need for this guidance is also a matter of extreme importance for students across the country. A nationwide 2011 survey found that while LGBT students often faced hostile school climates, transgender

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<sup>1</sup> See *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-216 (1st Cir. 2000), *Barnes v. City of Cincinnati*, 401 F.3d 729, 741 (6th Cir. 2005), *Smith v. City of Salem*, 378 F.3d 566, 572 (6th Cir. 2004), *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000), *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011), *Schroer v. Billington*, 577 F. Supp. 2d 293, 305 (D.D.C. 2008), *Michaels v. Akal Security, Inc.*, No. 09-cv-1300, 2010 WL 2573988, at \* 4 (D. Colo. June 24, 2010), *Lopez v. River Oaks Imaging & Diag. Group, Inc.*, 542 F. Supp. 2d 653, 660 (S.D. Tex. 2008), *Mitchell v. Axcan Scandipharm, Inc.*, No. Vic. A. 05-243, 2006 WL 456173 (W.D. Pa. Feb. 17, 2006), *Tronetti v. TLC HealthNet Lakeshore Hosp.*, No. 03-CV-0375E(SC), 2003 WL 22757935 (W.D.N.Y. Sept. 26, 2003), *Doe v. United Consumer Fin. Servs.*, No. 1:01 CV 111, 2001 WL 34350174 (N.D. Ohio Nov. 9, 2001).

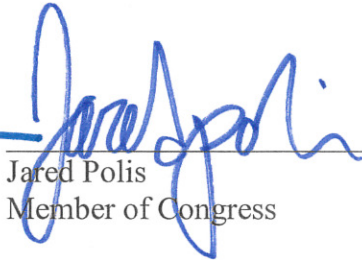
students face the most hostile climates. Among the more than 700 transgender students in grades 6 through 12 who responded to the survey, 80% reported feeling unsafe at school, 75% reported being verbally harassed, and 17% reported being physically assaulted. These numbers demonstrate why passage of the Student Non-Discrimination Act, and having explicit protections in place in federal law, is so important. However, based on positive case law developments, it is already clear that transgender and gender non-conforming youth are protected from discrimination and harassment, but many school districts do not have a clear understanding about how these legal protections should translate to non-discriminatory school policies. Guidance in line with current case law from the Office for Civil Rights would provide this needed clarity.

All students deserve the opportunity to attend school and learn free from discrimination because of who they are. We look forward to continuing to work with you to make this a reality for our nation's LGBT youth.

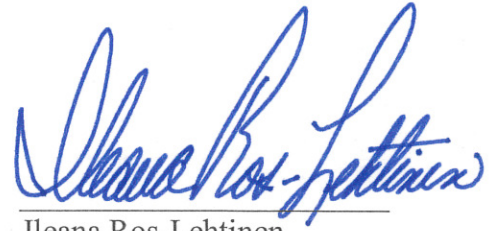
Sincerely,



Al Franken  
U.S. Senator



Jared Polis  
Member of Congress



Ileana Ros-Lehtinen  
Member of Congress

Cc: Assistant Secretary Catherine Lhamon