

# Congress of the United States

Washington, DC 20515

March 01, 2018

U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Secretary Betsy DeVos, and Acting Assistant Secretary Candice Jackson,

We are deeply concerned about the Department of Education's decision to not investigate complaints filed by transgender students who are barred from using bathrooms that match their gender identity. We believe that this decision is misguided and inconsistent with current legal standards. The Office for Civil Rights (OCR) and the Department has an obligation under Title IX of the Education Amendments of 1972 to protect students from sex-based discrimination. The policy position the OCR is taking is inconsistent with federal court holdings that discrimination against transgender individuals is sex discrimination.<sup>1</sup> The Department ignoring current legal standards and interpretations of Title IX amounts to willful dereliction of its obligation to protect *all* students from unlawful sex discrimination and willful ignorance of existing law. Our public schools should be a safe and civil learning environment for all students.

Discrimination against LGBTQ students in school settings robs our students of their right to a quality and safe education. In fact, according to a 2015 GLSEN study, LGBTQ students are three times as likely to miss school in a month, have higher levels of depression, and are twice as likely to not want to pursue post-secondary education as a result of discrimination at school. Further, gender identity discrimination in schools is correlated with lower self-esteem, lower sense of school belonging and increased rates of suicidal tendencies.<sup>2</sup> Even worse, transgender students have left or have been expelled from school due to maltreatment on the basis of being out or perceived as transgender.<sup>3</sup> The consequences of LGBTQ discrimination are real and severe, and it is the Department's responsibility to guarantee *all* of our students—regardless of sexual orientation or gender identity—a quality and safe learning space.

Towards reaching this goal, schools districts value guidelines and best practices of which they rely on the Department of Education to produce. This is especially true for smaller school districts that want to ensure they are implementing best practices in preventing discrimination. The guidance produced by the Department in 2016, provided certainty to these school districts to create a safe, inclusive and excellent learning environment.

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<sup>1</sup> *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1038 (7th Cir. 2017); *Dodds v. Dept. of Education*, 845 F.3d.217 (6th Cir. 2016). See also *Schwenk v. Hartford*, 204 F.3d 1187, 1200 (9th Cir. 2000), *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000), *Smith v. City of Salem* 378 F.3d 566 (6th Cir. 2004), and *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011).

<sup>2</sup> Kosciw, J. G., Greytak, E. A., Giga, N. M., Villenas, C. & Danischewski, D. J. (2016). *The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*. New York: GLSEN.

<sup>3</sup> James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.

The mission of the OCR is, “to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.” The Office for Civil Rights is disregarding its very own mission by ignoring the discrimination complaints from transgender students and falsely claiming gender identity discrimination is not within the OCR’s jurisdiction. Without much needed protections from the OCR, transgender students and their families have limited options for recourse to address unlawful discrimination in academic environments. Last year, the Department and the Department of Justice were quick to rescind joint guidance that prohibited the discrimination based on a student’s gender identity, including discrimination based on a student’s transgender status. Now, the Department has clearly stated that it will not investigate or take any action on complaints filed by transgender students. This is a continuation of the Administration’s effort to chip away at LGBT rights.

As Secretary to the Department of Education and as Acting Assistant Secretary for the OCR, it is your responsibility to protect all students from harmful practices that jeopardize the learning experience and environment of all students including transgender students. The Office for Civil Rights has an obligation to uphold civil rights laws and to eradicate discrimination within the nation’s educational institutions. As part of this mandate, the OCR must investigate and take actions for all complaints of sex-based discrimination, including those of transgender students and investigate accordingly and take the appropriate action, as the law requires. All students deserve access to a safe learning environment free from discrimination where they can thrive. It is time we ensure a safe and impactful education for all students regardless of sexual orientation or gender identity.

The position by the Department is inapposite to existing federal law and is a step backwards for LGBT civil rights. We urge you to reverse this position to ensure protections of transgender students in school settings.

Sincerely,



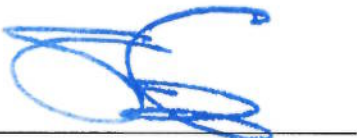
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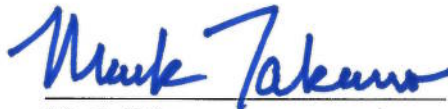


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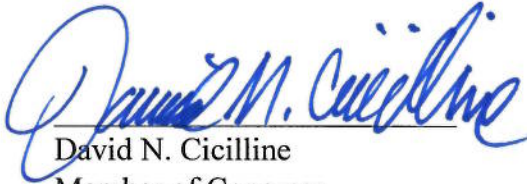
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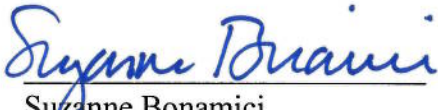
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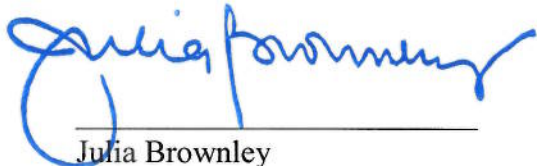
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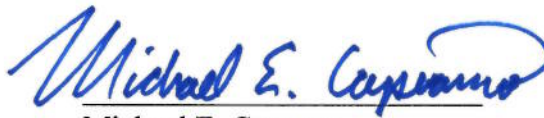
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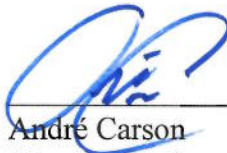
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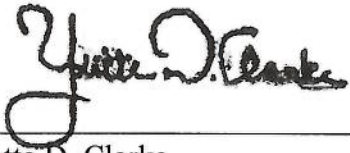


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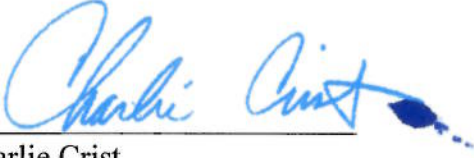




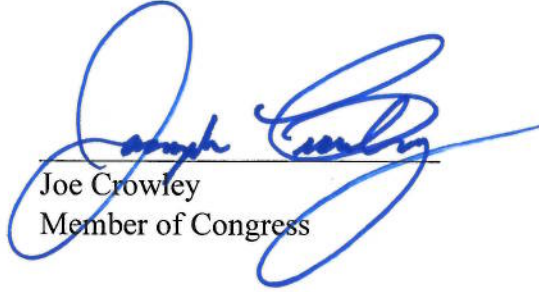
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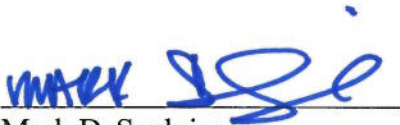
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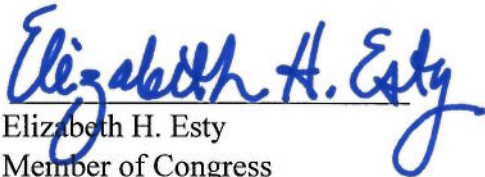
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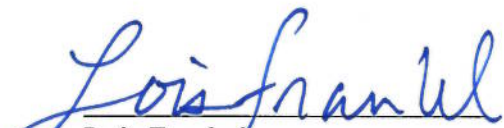
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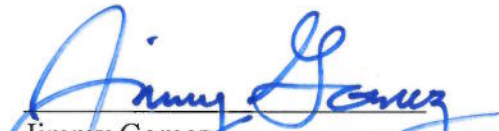
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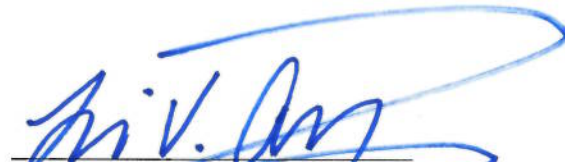
  
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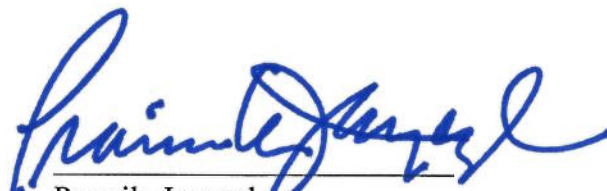
  
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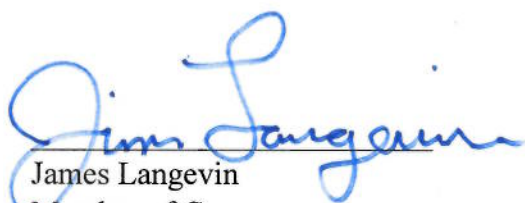
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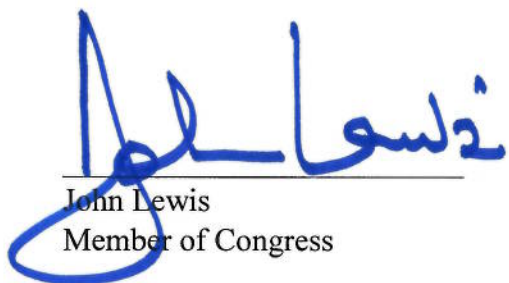
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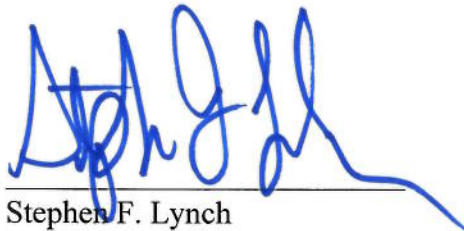
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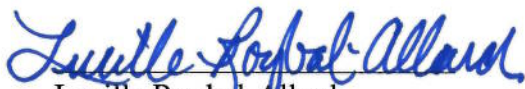
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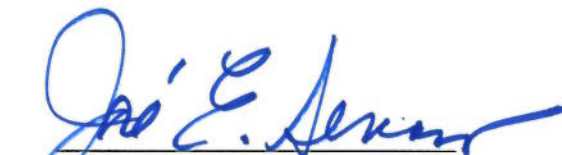
  
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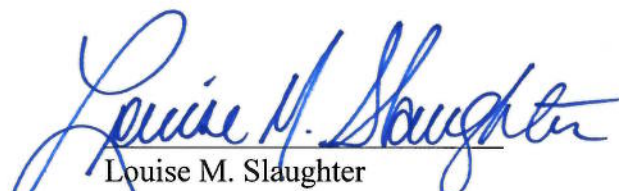
  
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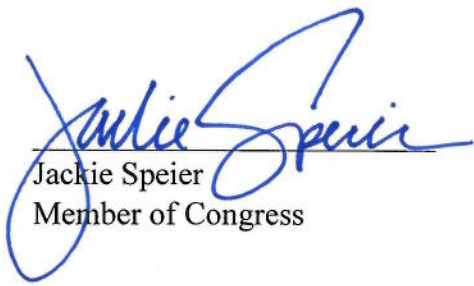
  
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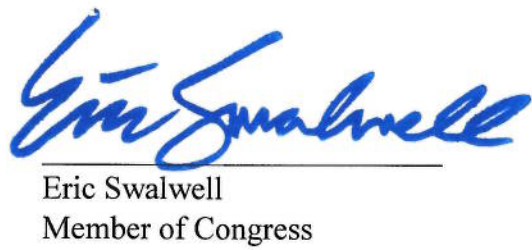
  
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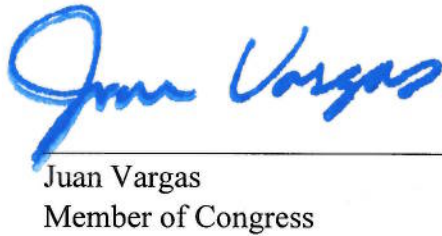



  
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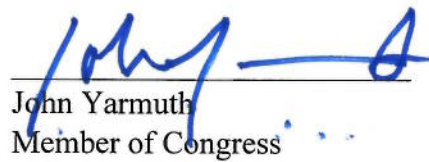
  
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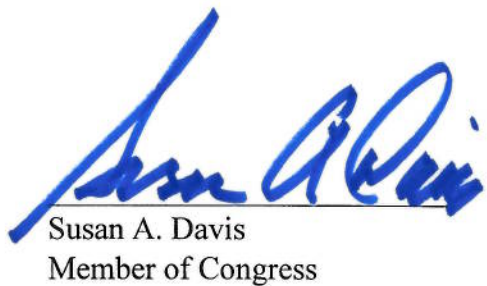
  
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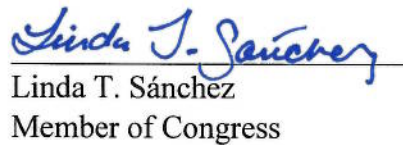
  
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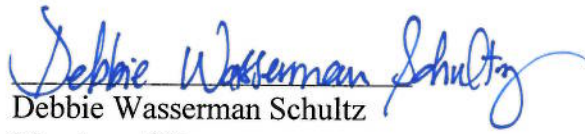
  
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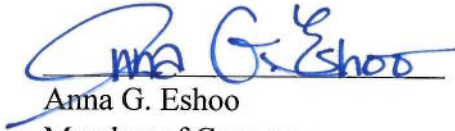
  
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