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OFFICE OF THE ATTORNEY GENERAL

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NEW YORK STATE EDUCATION DEPARTMENT  
THE UNIVERSITY OF THE STATE OF NEW YORK

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COMMISSIONER OF EDUCATION  
PRESIDENT OF THE UNIVERSITY OF THE STATE OF NEW YORK

February 28, 2018

This letter clarifies the rights of all students in New York to enjoy a safe and nondiscriminatory educational environment without regard to their gender identity; and confirms the ongoing obligation of all school districts in New York State to protect those rights under state and federal law.

On Monday, February 12, 2018, the United States Department of Education (“USDOE”) confirmed that it would no longer investigate civil rights complaints from transgender students denied access to bathrooms consistent with their gender identity. In light of this announcement, and the February 2017 decision by USDOE and the federal government to rescind guidance that clarified protections for transgender students under federal statutory law, the New York State Office of the Attorney General (“OAG”), the New York State Education Department (“SED”) and the New York State Board of Regents find it imperative once again to remind school districts across New York State that – irrespective of the federal government’s recent announcement – they have independent duties to protect transgender students from discrimination and harassment in their schools and at all school functions.

Through our offices’ joint efforts, we have committed to ensuring that all students in New York State attend school in safe and supportive environments in which they can learn and thrive. Our offices will continue to use all the existing tools of federal, state, and local law to ensure that transgender students are safe in their schools and have equal access to all programming and facilities consistent with their gender identity. Simultaneously, our offices also seek to provide school districts guidance to assist them with legal compliance.

With those twin aims in mind, our offices first seek to clarify for school districts the scope of USDOE’s recent announcement. That announcement was limited to USDOE’s own interpretation and enforcement of Title IX, the federal statute prohibiting discrimination on the basis of sex in any education program or activity receiving federal financial assistance.<sup>1</sup>

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<sup>1</sup> See 20 U.S.C. § 1681(a).

However, we note that even after USDOE rescinded its Title IX guidance in 2017, school districts in other states have faced legal action under both Title IX and other federal law – *e.g.*, federal constitutional claims – for restricting transgender students’ access to bathrooms consistent with their gender identity.<sup>2</sup>

Furthermore, the USDOE’s announcement has no bearing upon school districts’ independent duties, under New York State law, to protect their transgender students and ensure those students’ equal access to all school resources and programming. Specifically, New York State’s Dignity for All Students Act (“DASA”) expressly prohibits discrimination and harassment, on school property or at a school function, on the basis of a student’s gender identity or expression.<sup>3</sup> Based on this, SED issued guidance to all New York State school districts in July 2015, entitled “Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students.”<sup>4</sup> That guidance specifically addresses gender-segregated facilities, like bathrooms, locker rooms, and changing areas. The guidance also addresses other topics that frequently arise in assuring a safe and supportive environment for transgender students, including (i) the use of names and pronouns to address transgender students, (ii) privacy, confidentiality, and student records, and (iii) other gender-based school policies and practices. Our offices strongly encourage school districts to refer to SED’s guidance and modify their policies accordingly.

Our offices take seriously any action that compromises the school climate in which our students come to learn every day, and we have provided resources to help school staff, students, and parents report and address incidents of harassment, bullying, and discrimination.<sup>5</sup> The OAG

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<sup>2</sup> See *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp.3d 267, 284-95 (W.D. Pa. 2017) (issuing preliminary injunction ordering school to allow transgender students access to restrooms that correspond with their gender identities based on federal equal protection claim); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049-50 (7th Cir. 2017) (noting that a “policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX,” and ruling in favor of student on both Title IX and federal constitutional claims). Both of these legal challenges ultimately resulted in six-figure settlements paid by the school districts. See “Transgender Pine-Richland Students Receive Thousands as Part of Lawsuit Settlement,” available at <http://www.post-gazette.com/news/education/2017/08/08/Pine-Richland-School-District-transgender-students-lawsuit-settlement-bathroom-policy/stories/2017080800931>; “Unified Settles Transgender Lawsuit,” available at [http://www.kenoshanews.com/news/local/unified-settles-transgender-lawsuit/article\\_b90c8ac8-9b9e-511c-b01b-f59102c7578a.html](http://www.kenoshanews.com/news/local/unified-settles-transgender-lawsuit/article_b90c8ac8-9b9e-511c-b01b-f59102c7578a.html).

<sup>3</sup> See N.Y. EDUC. LAW § 11(6) (including “gender” as a protected category, which is defined as a “person’s actual or perceived sex and includes a person’s gender identity or expression”).

<sup>4</sup> SED’s guidance concerning transgender and gender nonconforming students is available at: [http://www.p12.nysed.gov/dignityact/documents/Transg\\_GNCCGuidanceFINAL.pdf](http://www.p12.nysed.gov/dignityact/documents/Transg_GNCCGuidanceFINAL.pdf).

<sup>5</sup> Additional guidance is available at: <http://www.p12.nysed.gov/dignityact/>.

and SED will continue to provide schools and families with guidance and support to ensure that our schools are safe havens for students where they can focus on learning; their civil rights are protected; and they have opportunities to succeed in school and life.

Sincerely,

Handwritten signature of Eric T. Schneiderman in cursive.

Eric T. Schneiderman  
Attorney General

Handwritten signature of MaryEllen Elia in cursive.

MaryEllen Elia  
Commissioner of Education