

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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August 19, 2020

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Madame Secretary:

In light of the Supreme Court's decision in *Bostock v. Clayton County*, the Subcommittee urges the Department of Education to reevaluate its recently announced policies and rulemakings that allow for discrimination against LGBTQ+ people. In a 6-3 decision, the Supreme Court ruled that Title VII protections against sex-based discrimination in the workplace extend to sexual orientation and gender identity.

Since the beginning of the Trump Administration, the Department has taken steps to undermine protections for LGBTQ+ people in education in the United States:

- In February 2017, the Department rescinded a “Dear Colleague” guidance letter clarifying that Title IX prohibits discrimination on the basis of gender identity.¹
- The Department has routinely failed to address complaints of LGBTQ+ discrimination, and has refused to even investigate allegations that transgender students have been illegally barred from using bathrooms and locker rooms consistent with their gender identity.² A July 2019 report found that complaints related to LGBTQ+ discrimination were “more than nine times less likely to result in corrective action than they were under the Obama administration.”³
- Though it has refused to vindicate the rights of LGBTQ+ students, the

¹ *Trump and Transgender Rights: What Just Happened?*, National Public Radio (Feb. 23, 2017) (online at www.npr.org/sections/ed/2017/02/23/516837258/5-questions-about-the-trump-administrations-new-transgender-student-guidance).

² *The Education Department Says It Won't Act on Transgender Student Bathroom Access*, National public Radios (Feb. 12, 2018) (online at www.npr.org/sections/ed/2018/02/12/585181704/the-education-department-says-it-wont-act-on-transgender-student-bathroom-access).

³ *Secretary DeVos Is Failing to Protect the Civil Rights of LGBTQ Students*, Center for American Progress (July 29, 2019) (online at www.americanprogress.org/issues/lgbtq-rights/reports/2019/07/29/472636/secretary-devos-failing-protect-civil-rights-lgbtq-students/).

Department opened an official investigation into the Connecticut Interscholastic Athletic Conference for allowing transgender students to compete in sports leagues consistent with their gender identity.⁴

- The Department proposed a “Faith-Based Initiative” rule to exempt religious organizations receiving federal funds from requirements to provide a notice of nondiscrimination and referrals to secular organizations.⁵

These policies and rulemakings significantly undercut the civil rights and liberties of LGBTQ+ people.⁶ In *Bostock*, the Supreme Court ruled that prohibitions on discrimination on the basis of sex includes discrimination on the basis of sexual orientation and gender identity. Though *Bostock* concerned Title VII, federal case law has long established a connection between Title VII and Title IX.⁷ The Administration itself has conceded that “Title VII case law has often informed Title IX case law with respect to the meaning of discrimination ‘on the basis of sex.’”⁸ There is little doubt that the *Bostock* decision is readily transferrable to Title IX and the programs that the Department administers. The Department, therefore, should immediately reverse its systematic refusal to enforce LGBTQ+ rights.

Furthermore, the Court’s clear affirmation of LGBTQ+ rights should prompt an examination of the Administration’s expansion of religious liberty exemptions to non-discrimination requirements. Title VII does not provide blanket exemptions for anyone claiming religious liberty to discriminate on the basis of sex and neither should Title IX.⁹

⁴ *Civil Rights Probe Opened into Transgender Athlete Policy*, NBC News (Aug. 9, 2019) (online at www.nbcnews.com/feature/nbc-out/civil-rights-probe-opened-transgender-athlete-policy-n1040796).

⁵ Department of Education, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program*, 85 Fed. Reg. 3190 (Jan. 17, 2020) (online at www.federalregister.gov/documents/2020/01/17/2019-26937/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards-direct).

⁶ *Religious Exemptions Are Gutting Civil Rights Protections, Advocacy Groups Warn*, NBC News (May 19, 2020) (online at www.nbcnews.com/feature/nbc-out/religious-exemptions-are-gutting-civil-rights-protections-advocacy-groups-warn-n1209826).

⁷ U.S. Commission on Civil Rights, *U.S. Commission on Civil Rights Calls on Trump Administration to Revise Regulations and Enforcement Practices to Recognize Civil Rights Protections for LGBT Americans and Comply with the Bostock Decision* (June 19, 2020) (online at www.usccr.gov/files/2020-06-19-USCCR-Calls-for-Changes-Post-Bostock.pdf).

⁸ Department of Health and Human Services, *Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority*, 85 Fed. Reg. 37160 (June 19, 2020) (online at www.federalregister.gov/documents/2020/06/19/2020-11758/nondiscrimination-in-health-and-health-education-programs-or-activities-delegation-of-authority).

⁹ U.S. Equal Employment Opportunity Commission, *Questions and Answers: Religious Discrimination in the Workplace* (July 22, 2008) (online at www.eeoc.gov/laws/guidance/questions-and-answers-religious-discrimination-workplace); *Trump Administration Proposed Rules Give Schools a Blank Check to Discriminate, Says NWLC*, National Women’s Law Center (Jan. 17, 2020) (online at <https://nwlc.org/press-releases/trump-administration-proposed-rules-give-schools-a-blank-check-to-discriminate-says-nwlc/>).

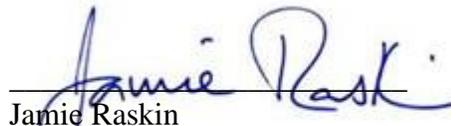
The Subcommittee requests that the Department provide a written plan by September 2, 2020 that:

1. Identifies all policies and rulemakings made by the Department since January 20, 2017 that:
 - a. altered how the Department interprets “sex;”
 - b. altered how the Department processes complaints regarding discrimination against LGBTQ+ people; or
 - c. expanded religious exemptions from non-discrimination provisions; and
2. Describes the steps that the Department will take to reevaluate and alter these discriminatory policies in light of the Supreme Court’s ruling in *Bostock*.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Jamie Raskin
Chairman
Subcommittee on Civil Rights and Civil Liberties

Enclosure

cc: The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties
Committee on Oversight and Reform

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.