

April 10, 2025

Linda McMahon  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

Dear Secretary McMahon:

The undersigned organizations write with urgent concern for how, under your stewardship, the U.S. Department of Education (“the Department”) is failing to fulfill its core civil rights functions to ensure equitable educational opportunities for all students. **The Department’s actions alarmingly contribute to hostile learning environments for transgender, nonbinary, intersex, and gender-expansive students through both a deprivation of resources for civil rights enforcement and ideologically motivated investigations that target affirming policies.** We collectively demand that you align the Department’s focus with the letter and intent of federal civil rights law by ensuring every student has access to a school environment that is free from sex-based harassment and discrimination.

Students are coming out as transgender, nonbinary, and gender-expansive at higher rates than ever before, with the nonpartisan Pew Research Center finding that 5 percent of young adults in Generation Z (ages 18-29) openly identify as a gender different than their sex assigned at birth, with 2 percent identifying as transgender and 3 percent as nonbinary.<sup>1</sup> If those rates are applied to the entire student population, there may be more than 778,000 public high school students who are gender-expansive, including more than 300,000 transgender students and 460,000 nonbinary students.<sup>2</sup> Federal data suggests that Generation Alpha may be even more gender-expansive than prior generations, with the Centers for Disease Control and Prevention (CDC) estimating that 3.3 percent of high school students identify as transgender - which would mean there are more than 513,000 transgender public high school students in the United States.<sup>3</sup>

The increased rates young people are coming out as transgender, nonbinary, intersex, and gender-expansive is owed to the growing availability of supportive spaces and resources for LGBTQI+ people, as well as increased visibility of the experiences and lives of LGBTQI+ people. Transgender, nonbinary, intersex, and gender-expansive people have always existed, and attacks on their legal

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<sup>1</sup> Pew Res. Ctr. “About 5% of young adults in the U.S. say their gender is different from their sex assigned at birth.” (June 7, 2022), <https://pewrsr.ch/3Qi2Ejd>.

<sup>2</sup> *Compare id.*, with Nat’l Ctr. for Ed. Statistics, Digest of Education Statistics, 2024 Tables and Figures: Table 203.65: Enrollment in public elementary and secondary schools, by level, grade, and race/ethnicity: Selected years, fall 2013 through fall 2023, [https://nces.ed.gov/programs/digest/d24/tables/dt24\\_203.65.asp](https://nces.ed.gov/programs/digest/d24/tables/dt24_203.65.asp).

<sup>3</sup> U.S. Dep’t of Health and Human Servs., Ctrs. for Disease Ctrl. & Prev. MMWR Weekly Supp. 73(4):50-58 (Oct. 10, 2024).

protections and safe spaces will not change that – but will only increase stigma, harassment, and risk of poor educational and mental health outcomes.

Gender-expansive students face disproportionately hostile learning environments that impact their academic success and overall well-being. GLSEN’s National School Climate Survey of over 22,000 LGBTQI+ youth identified that 74% of transgender students and 68% of nonbinary students faced in-person victimization - including bullying, harassment, or assault - based on their gender expression.<sup>4</sup> Transgender students are 63% more likely and nonbinary students are 57% more likely than their cisgender LGB+ peers to miss school due to safety concerns; transgender students are 53% more likely and nonbinary students are 33% more likely than their LGB+ peers to change schools because they feel unsafe.<sup>5</sup> CDC has similarly found sharp disparities impacting transgender youth, reporting that 53% of transgender youth seriously considered suicide within the past year and 26% attempted suicide - rates significantly higher than those seen among cisgender students, and which are likely owed to the intense mistreatment they so often face.<sup>6</sup>

With increased visibility of gender-expansive students in recent years, many state and local education agencies have implemented policies to support students in their identities and foster a welcoming environment for all students. These policies address the wide scope of gender-expansive students’ lived experience, including access to sex-separated spaces, eligibility for sex-separated school programming, inclusive standards for curriculum and classroom instruction, guidance and training for school staff to respectfully affirm students in their identities, and approaches to support LGBTQI+ students in navigating the process of sharing their identities with school staff and their peers. Many of these inclusive policies have also accounted for the needs of intersex students - youth who are born with innate variations in their sex characteristics that may not fit narrow binary notions of male or female bodies.

Policies that affirm gender-expansive students are not only the right thing to do, but are consistent with federal and state civil rights laws. In 2020, the U.S. Supreme Court ruled in *Bostock v. Clayton County* that federal law barring discrimination based on sex applies to discrimination based on gender identity.<sup>7</sup> Writing for the majority, Justice Gorsuch observed, “discrimination based on ... transgender status necessarily entails discrimination based on sex; the first cannot happen without the second.”<sup>8</sup> **The Department cannot ignore the *Bostock* precedent and its applicability to Title IX.** Indeed, in April 2024 under the prior administration, the Department promulgated regulations under Title IX to provide further clarity for education agencies on their legal obligations to ensure that gender-expansive students - including transgender, nonbinary, and intersex students - do not face sex-based discrimination, although litigation is still pending and the

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<sup>4</sup> GLSEN. The 2021 National School Climate Survey: The Experience of LGBTQ+ Youth in Our Nation’s Schools, at 86 (2022). <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>.

<sup>5</sup> *Id.* at 90.

<sup>6</sup> CDC, *supra* n.3, at 54.

<sup>7</sup> *Bostock v. Clayton Cty.*, 590 U.S. 644 (2020).

<sup>8</sup> *Id.* at 669.

rule updates have not been implemented nationwide.<sup>9</sup> Even under the 2020 regulations promulgated under the first Trump administration, the Department made clear that LGBTQI+ students were protected from unlawful harassment.<sup>10</sup>

Federal courts had connected the dots even before the regulatory updates and the *Bostock* ruling, with multiple federal district and appellate courts finding that Title IX demands a remedy when transgender students face school-based discrimination.<sup>11</sup> More than 20 states also have state laws or policies that protect students from gender identity and sexual orientation-based discrimination.<sup>12</sup> LGBTQI+ students continue to have rights that can be vindicated in court - both under Title IX and other bases - regardless of whether the Department has articulated those rights in regulations or in its own enforcement actions.<sup>13</sup>

As education agencies work to support gender-expansive and intersex students, your team at the Department has taken an adversarial stance that unlawfully undermines Title IX's applicability to gender-expansive students, chills affirming policies and free expression, and advances extreme arguments in an effort to deny the existence of gender-expansive and intersex students and deny them necessary supports to succeed at school. **Your intimidation tactics misrepresent the legal obligations of schools to prevent sex-based discrimination against gender-expansive and intersex students.**

We collectively raise the alarm as the Department's own actions inhibit state and local education leaders in their work to meet the needs of an increasingly diverse student population. We condemn and object to the following actions taken by the Department in recent months:

- Termination of nearly half of the federal staff of the Office for Civil Rights (OCR) and the closure of seven field offices that assist with processing and investigating civil rights complaints across the country;
- Threats to withhold federal funds in an attempt to coerce state education agencies, local education agencies, and state athletic associations to adopt exclusionary policies that limit educational opportunities for gender-expansive and intersex students;

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<sup>9</sup> See *Tennessee v. Cardona*, Proposed Intervenor-Defendants Motion to Intervene, Case No. 2:24-cv-00072-DCR-CJS, Doc. # 164 (Feb. 28, 2025).

<sup>10</sup> U.S. Dep't of Educ., Office for Civil Rights. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. 85 Fed. Reg. 30026, 30179 (May 19, 2020).

<sup>11</sup> *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034 (7th Cir. 2017); *Grimm v. Gloucester Cty. Sch. Bd.*, 976 F.3d 399 (4th Cir. 2020); *B.P.J. v. West Virginia State Bd. of Educ.*, No. 23-1078 (Apr. 16, 2024); *Doe v. Horne*, 115 F.4th 1083 (9th Cir. 2024); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018) .

<sup>12</sup> See GLSEN. Student Nondiscrimination Policies. <https://maps.glsen.org/student-nondiscrimination-policies/>.

<sup>13</sup> See *B.P.J. v. West Virginia State Bd. of Educ.*, No. 23-1078 (Apr. 16, 2024); *Hecox v. Little*, 104 F.4th 1061 (9th Cir. 2024) (anti-trans sports bans likely violate trans students' rights under the Equal Protection Clause).

- Initiation of directed investigations into state education agencies, local education agencies, and state athletic associations to target gender-inclusive policies;
- Halting investigation of over 10,000 pending civil rights complaints, leaving student survivors and students with disabilities without support or even updates, in favor of politicized investigations that target transgender and intersex inclusion, helping no one;
- Convening a Special Investigations Team, in coordination with the U.S. Department of Justice, with the stated purpose of investigating education agencies for adopting inclusive policies that support gender-expansive students;
- Summary dismissal of pending complaints alleging hostile educational environments created by book bans without individualized investigation and based on a blatant lie calling such complaints about book bans “hoaxes”;
- Issuance of policy guidance through the Student Privacy Policy Office and investigations into state agencies and school districts that misstate schools’ obligations under federal privacy laws with the intent to chill the use of student support plans or other practices for schools to support gender-expansive youth in sharing their identity with staff, their parents or guardians, and their peers;
- Proposed revision of the Free Application for Federal Student Aid (FAFSA) Form to narrow sex demographic data collection in a way that excludes transgender and nonbinary applicants and could deter completion of the form - and access to federal financial aid - among gender-expansive students.

Today’s students are tomorrow’s leaders, and we cannot afford to deny anyone their humanity and dignity in the nation’s schools. The Department’s crucial civil rights mission is being cast aside and its resources misapplied to further marginalize a vulnerable student group in a manner contrary to federal law. We demand that you cease this reckless campaign of unlawfulness and intimidation against students, schools, and states.

Sincerely,

GLSEN  
 National Women’s Law Center  
 Advancement Project  
 Advocates for Trans Equality  
 Advocates for Youth  
 AFT  
 Alliance for TransYouth Rights  
 American Atheists

American Association of University Women (AAUW)  
Americans United for Separation of Church and State  
Autistic Self Advocacy Network (ASAN)  
Clearinghouse on Women's Issues  
Council for Global Equality  
Disability Rights Education and Defense Fund (DREDF)  
EdTrust  
Empowering Pacific Islander Communities (EPIC)  
Equal Rights Advocates  
Equality California  
Equality Federation  
Family Equality  
Feminist Majority Foundation  
GLMA: Health Professionals Advancing LGBTQ+ Equality  
Human Rights Campaign  
Illinois Accountability Initiative  
interACT: Advocates for Intersex Youth  
Just Detention International  
Just Solutions  
Legal Momentum, The Women's Legal Defense and Education Fund  
Los Angeles LGBT Center  
MomsRising  
Movement Advancement Project (MAP)  
National Association of School Psychologists  
National Center for Learning Disabilities  
National Council of Jewish Women  
National Education Association  
National LGBTQ Task Force Action Fund  
Oasis Legal Services  
PFLAG National  
Public Justice  
Red Wine & Blue  
Reproductive Freedom for All (formerly NARAL Pro-Choice America)  
Rocky Mountain Equality  
The Sikh Coalition  
Silver State Equality  
TransFamily Support Services  
Union for Reform Judaism  
VALOR  
Women's Law Project