

United States Senate

WASHINGTON, DC 20510-2101

May 19, 2016

The Honorable Loretta E. Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

The Honorable John King
Secretary of Education
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Attorney General Lynch and Secretary King,

Every transgender person is someone's child and should be treated with respect. But that does not justify a federal executive agency acting as a national school board telling 100,000 public schools how to resolve this issue.

Deciding which bathroom, locker room, or shower transgender students should use is the kind of issue the states, parents, school boards, communities, students, and teachers should work out in a practical way with a maximum amount of respect for the individual rights of the students who are transgender as well as the rights of those who are not. If the solutions developed by states and communities violate the equal protection guarantees of the U.S. Constitution or federal civil rights laws, federal courts are available to protect students' rights.

It is not appropriate for a federal executive agency to issue "guidance" for every school as if it were the law. Article I of the U.S. Constitution gives Congress the exclusive right to make laws. In some cases, executive agencies may issue regulations, but these regulations must be authorized by law and are subject to strict procedural requirements. The Supreme Court, Congress and the Obama administration itself all have made clear that such guidance does not have the force of law. This issue involves circumstances that were never envisioned by existing laws. During Senate debate last year on the Every Student Succeeds Act, an amendment was offered to do, by statute, what the administration is now trying to enforce in guidance as if it were the law. The Senate voted not to adopt the amendment.

It may be appropriate for the U.S. Department of Education to answer questions or issue guidance about its opinion of the existing law. But federal law does not require states and school districts to follow that guidance. Until Congress or the courts settle the federal law, states and school districts are free to devise their own reasonable solutions.

Sincerely,


Lamar Alexander


Chuck Grassley

Orin Hatch

Paul Coburn

Frank Lautenberg

John Cornyn

Michael B. Enzi

James M. Udall

John McLean

Dan Coats

Bill Cassidy, M.D.

W. Michael Bond

John Barrasso

John Boozman

Jeff Sessions

John Thune

Bennet

Tom Tillis

Pat Roberts

Steve Daines

Joni K. Ernst

Tom Cotton

Tim W. Scott

David A. Perdue

Richard Shelby