

April 8, 2016

Dear College/University President or Chancellor,

We are writing to you as the leader of a public college or university in North Carolina. A bill recently passed by the North Carolina General Assembly, House Bill 2, purports to impose requirements on your school and other public educational institutions that violate federal law and could subject the institution to federal lawsuits, investigations, and loss of federal funding. House Bill 2 is the subject of ongoing litigation, and the North Carolina Department of Justice has declined to defend it in court.

We share the following information so that your educational institution is fully informed when making important decisions about how best to treat students and employees with dignity and respect. Allowing transgender students and employees to access restrooms and other facilities consistent with their gender identity is not only in the best interest of students, it is also required by federal law.

Discrimination against transgender students is harmful and counter to the educational mission of colleges and universities

Excluding transgender students from facilities that correspond to their gender identity sends a message to transgender students and their peers that there is something wrong with them and that they are not entitled to the same dignity as other students. Transgender students are at heightened risk of bullying by peers and adults, and the stress of harassment and discrimination can lead to lower attendance and grades as well as depression, anxiety, and suicidality.ⁱ

We all care about privacy and safety in restrooms. Allowing transgender students to use restrooms appropriate for their gender identity does not jeopardize, but rather protects, privacy and safety. North Carolina already has laws against sexual assault or invading others' privacy in restrooms. To the extent that any student feels uncomfortable using a restroom with another student, private facilities may be made available upon request, so long as no student is *forced* into separate facilities.

Refusing to allow transgender students to use restrooms consistent with their gender identity violates federal anti-discrimination law and risks litigation and loss of federal funds

House Bill 2 requires public colleges and universities to discriminate against transgender students, as well as transgender staff. However, compliance with House Bill 2 creates serious legal and fiscal risks for public educational institutions because it conflicts with federal laws, including Title IX of the Education Amendments of 1972. Title IX prohibits sex discrimination in education programs that receive federal funds.ⁱⁱ The U.S. Departments of Justice and Education have stated repeatedly in guidance and court briefs that Title IX prohibits discrimination based on gender identity, including practices that bar students from using school restrooms and changing rooms consistent with their gender identity.ⁱⁱⁱ Many courts have also held that sex discrimination laws like Title IX protect transgender people.^{iv} Educational institutions that have excluded students from facilities consistent with

their gender identity have faced lawsuits in federal court and investigations by the Departments of Justice and Education.^v

With regard to your employees, Title VII of the Civil Rights Act of 1964 prohibits sex discrimination by state and local government employers.^{vi} The U.S. Justice Department and Equal Opportunity Commission have recognized that Title VII prohibits gender identity discrimination and requires employers to provide equal access to workplace restrooms and changing facilities consistent with an employee's identity.^{vii} Private employers have faced lawsuits for denying such restroom access to transgender employees, including by the EEOC,^{viii} and the Justice Department has also sued a state university for gender identity discrimination.^{ix} Federal courts have also held that discrimination against transgender individuals violates the Equal Protection Clause of the U.S. Constitution.^x

Thus, colleges and universities in North Carolina that engage in discriminatory practices pursuant to House Bill 2 would violate federal law. While House Bill 2 includes no enforcement mechanisms, violations of Title IX and Title VII could result in federal litigation by students, employees, or the US EEOC or Justice Department, as well as federal administrative investigations and potential loss of federal funding.

We hope this letter is helpful in addressing some of the questions and concerns raised by House Bill 2. You may wish to consult the *Suggested Best Practices for Supporting Trans* Students* from the Consortium of Higher Education LGBT Resource Professionals for information about how to provide a safe and supportive environment for all students.^{xi} If you have any questions, please feel free to contact Harper Jean Tobin at the National Center for Transgender Equality at hjtobin@transequality.org or (202) 745-2303.

Thank you for the work you do every day to ensure quality education for all.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. J. Tobin', with a horizontal line extending to the right and a small dot at the end.

Harper Jean Tobin
Director of Policy
National Center for Transgender Equality

ⁱ E.g., Sari L. Reisner et al., *Mental Health of Transgender Youth in Care at an Adolescent Urban Community Health Center*, 56 J. ADOLESCENT HEALTH 274 (Mar. 2015).

ⁱⁱ 20 U.S.C. § 1681.

ⁱⁱⁱ E.g., Brief for the United States as Amicus Curiae, *G.G. v. Gloucester Cty. Sch. Bd.*, No. 15-2056 (4th Cir. Oct. 28, 2015); Statement of Interest of the United States, *Tooley v. Van Buren Pub. Sch.*, No. 2:14-cv-13466 (E.D. Mich. filed Feb. 24, 2015); U.S. Dep't of Educ., *Title IX Coordinators Guide* 15, 19, 21-22 (Apr. 2015).

^{iv} E.g., *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000); *Rumble v. Fairview Health Serv.*, No. 14-cv-2037, 2015 WL 1197415 (D. Minn. Mar. 16, 2015); *Fabian v. Hosp. of Cent. Conn.*, No. 3:12-cv-1154, 2016 WL 1089178 (D. Conn. Mar. 18, 2016); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008); *Finkle v. Howard Cty., Md.*, 12 F. Supp. 3d 780 (D. Md. 2014).

^v E.g., Finding Letter from Adele Rapport, Office for Civil Rights of U.S. Department of Education, to Daniel E. Cates, Township High School District 211 (Nov. 2, 2015); Resolution Letter from Anurima Bhargava, U.S. Department of Justice, & Arthur Zeidman, Office for Civil Rights of U.S. Department of Education, to Joel Shawn, Arcadia Unified School District (July 24, 2013); Resolution Letter from Arthur Zeidman, Office for Civil Rights of U.S. Department of Education, to John A. Garcia, Downey Unified School District (Oct. 14, 2013).

^{vi} 42 U.S.C. § 2000e-2.

^{vii} Attorney General Memorandum, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (Dec. 15, 2014); *Lusardi v. McHugh*, E.E.O.C. App. No. 0120133395 (Apr. 1, 2015).

^{viii} *EEOC v. Deluxe Fin. Servs. Corp.*, No. 0:15-cv-02646-ADM-SER (D. Minn. filed June 4, 2015, settled Jan. 20, 2016).

^{ix} *United States v. Se. Okla. State Univ.*, No. civ-15-324-c, 2015 WL 4606079 (W.D. Okla. Jul. 10, 2015).

^x *Glenn*, 663 F.3d at 1316.

^{xi} Consortium of Higher Education, *Suggested Best Practices for Supporting Trans* Students* (2014), <http://www.lgbtcampus.org/assets/consortium%20suggested%20trans%20policy%20recommendations-compressed.pdf>.