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**DOUGLAS J. PETERSON**  
ATTORNEY GENERAL

May 17, 2016

Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Department of Education  
400 Maryland Ave. S.W.  
Washington, DC 20202-1100

Vanita Gupta, Principal Deputy Assistant Attorney General for Civil Rights  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Ave. N.W.  
Office of the Assistant Attorney General, Main  
Washington, DC 20530-0001

**RE: Joint Guidance Letter on Transgender Students dated May 13, 2016**

Dear Assistant Secretary Lhamon and Assistant Attorney General Gupta:

As the Attorney General of Nebraska, one of my most important responsibilities is to ensure that Nebraska law enforcement properly investigates and prosecutes sexual offenses against children. As part of that process, we provide critical victim assistance programs to children who have been sexually abused. Unfortunately, the number of young victims of sexual assault, pornography, extortion, exhibitionism, or voyeurism continues to grow.

We must do everything in our power to support students who have been traumatized by a prior sexual exploitation. But, your May 13, 2016, joint guidance letter regarding transgender students, will likely create a more threatening environment to students who are prior victims of sexual exploitation. While your stated goal is to make transgender students feel more welcome at school, the joint guidance letter fails to consider the emotional and psychological impact open restrooms and locker rooms may have on other students. The proposal also assumes that if implemented, all students would act appropriately in such uncomfortable settings.

Since Title IX's passage in 1972, the law has been limited to maintaining equality

between male and female students in our school systems. In fact, Congress expressly provided in Title IX and its regulations, that schools can continue to have separate restrooms, locker rooms, and showers for men and women. See, 34 CFR 106.33. Congress has declined to broaden Title IX to require that schools allow students of one sex access to restrooms, locker rooms, or showers designated for members of the opposite sex. Such an expansion of Title IX can only lawfully be accomplished through the legislative process. Absent such an amendment, your joint guidance letter is a misrepresentation of the current law.

The proposed guidance puts prior sexual exploitation victims at risk for re-traumatization. According to reports promulgated to the U.S. Department of Justice, one in four females under the age of 18, and one out of six males, will be sexually assaulted. Approximately 23% of those sexual assaults will be inflicted by a person under the age of 18. Sadly, the victimized child will not report the majority of these incidents to authorities. The Departments' guidance, which seeks to require schools to allow students in restrooms, locker rooms, or showers designated for members of the opposite sex, may exacerbate the traumatization of these young victims. This is not to suggest that transgender students are more likely to commit assaults. Rather, the concern is the risk caused when both sexes are allowed to use the same facilities at the same time. Individualized plans can be developed in consultation with parents, students, and school officials to accommodate transgender students' needs without creating new risks and problems.

Given the prevalence of sexual assaults against individuals under 18, the proposed guidance is ill-conceived. No child should be forced into an intimate setting like a restroom or locker room with someone of the opposite sex. While seeking to address the problems of a small minority of students, the proposed guidance threatens the privacy rights, dignity, and innocence of countless students, especially vulnerable youth.

I strongly encourage you to withdraw the proposed guidance and work with Congress to address this issue. This office will do everything in its power to resist any attempt to unconstitutionally expand Title IX requirements by bureaucratic whim, particularly if such changes are accompanied by the threat of withholding federal resources from local districts who decline to comply with such a misguided dictate.

Sincerely,



Douglas J. Peterson  
Attorney General for Nebraska