



**NASPA**<sup>®</sup>

Student Affairs Administrators  
in Higher Education

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## NASPA Position on Protection of Trans and Gender Non-Binary Individuals' Rights

The tenuous nature of trans and gender non-binary individuals' rights has been in the spotlight for the last several years. During President Obama's tenure, the Department of Education (ED) issued a May 2016 Dear Colleague Letter<sup>1</sup> (DCL) instructing institutions clearly and for the first time that under Title IX of the Education Amendments of 1972 (Title IX)<sup>2</sup>, "a school must not treat a transgender student differently from the way it treats other students of the same gender identity" without "requiring students to produce ... identification documents in order to treat them consistent with their gender identity." Secretary of Education Betsy DeVos rescinded the May 2016 DCL in February 2017 and one year later the ED Office for Civil Rights (OCR) announced that they would no longer consider cases involving trans student access to bathroom or changing facilities represents. In the Department's proposed rule on Title IX, the administration removed the requirement for institutions to submit a letter to request affirmation of an exemption under Title IX, putting the rights of pregnant students, gender non-binary students, transgender students, and LGBTQ-identified students into question at exempt institutions.

In October 2018, the *New York Times* reported that the Department of Health and Human Services (HHS) had proposed to change the definition of sex to an immutable, biologically-based, male/female binary<sup>3</sup> and in January 2019 the Supreme Court of the United States (SCOTUS) lifted blocks on the Trump administration's trans military ban. Proposed state legislation designed to restrict access to bathroom and locker room facilities based on the gender an individual was assigned at birth, commonly known as "bathroom bills,"<sup>4</sup> as well as efforts to restrict trans and gender non-binary individuals' rights under the guise of religious freedom create a hostile environment for transgender individuals across the country. These actions cumulatively represent a substantial reversal of civil rights protections for trans and gender non-binary individuals.

NASPA priorities for the protection of trans student rights include:

- **Reinstate of Obama-era protections for trans and gender non-binary students under Title IX.** The NASPA Board of Directors resolved during their March 2017 meeting, on behalf of its members, support for the reinstatement of the Obama-era guidance regarding the protection of trans and gender non-binary students in our nation's schools, colleges, and universities. NASPA therefore supports the expansion of Title IX sex discrimination protections to include gender identity.
- **Oppose proposed changes to transparency of religious exemption in Title IX regulations.** Along with other concerns to the Department of Education's Title IX proposed rules, NASPA finds the proposed removal of the requirement for institutions to submit a letter to request exemption

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<sup>1</sup> <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

<sup>2</sup> Title IX of the Educational Amendments of 1972: <https://www.justice.gov/crt/title-ix-education-amendments-1972>

<sup>3</sup> <https://www.naspa.org/about/blog/naspa-opposes-actions-that-restrict-rights-of-transgender-and-gender-non-bi>

<sup>4</sup> <https://www.naspa.org/rpi/posts/state-legislative-analysis-bathroom-bills>

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under Title IX further marginalizes trans and gender non-binary students. It is imperative that our institutions of higher education provide transparency about whether the rights of all students will be protected should they enroll at a religiously-affiliated institution.

- **Oppose state or federal legislation that restricts the rights of trans individuals to be treated in any way inconsistent with their gender identity.** Policies and laws that restrict the rights of trans and gender non-binary individuals to access public bathroom or changing facilities or to require identification documentation to treat trans individuals consistent with their gender identity is discriminatory. In the 2018 state legislative session alone 18 exclusionary and anti-trans pieces of legislation were introduced. Such legislation has the potential to increase harassment in and around public and school bathrooms and increase danger for trans and gender non-binary individuals and others suspected of violating these laws, resulting in the laws decreasing safety instead of their oft-stated intent to increase safety.
- **Oppose discrimination under the guise of religious freedom.** Legislation purporting to protect religious freedom creates a false rift between religious freedom and the rights of LGBTQ individuals. Current Georgia Governor, Brian Kemp has indicated that he will sign religious freedom legislation should it reach his desk, while former Governor Nathan Deal prevented such legislation from passing in 2016. NASPA recognizes that religious freedom does not necessitate discrimination against groups of individuals and is, in fact, antithetical to the beliefs and values of many religions. Legitimizing discrimination under the name of religious freedom undermines NASPA's values of integrity, innovation, inclusion, and inquiry.
- **Creation of federal legislation firmly establishing trans and gender non-binary individuals' rights.** NASPA applauds federal court rulings that find protection for trans student rights to be included under the 14<sup>th</sup> Amendment as well as state actions to protect trans individuals. Our association leaders recognize, however, the patchwork nature of rights this approach creates across our country. We urge Congress to act in crafting federal legislation to firmly secure and protect the rights of trans individuals.

Student affairs professionals see first-hand the day-to-day lived experiences of our colleagues and students. Sharing their stories is a powerful policy advocacy tool, both in state legislatures and in campus leadership meetings. We encourage our members to continue to support our association and professional values of integrity, innovation, inclusion, and inquiry and work to protect and defend the rights of trans individuals in our communities. NASPA is committed to helping its members continue to push forward on providing adequate support services and trans friendly policies and procedures at their institutions.

## About NASPA

NASPA – Student Affairs Administrators in Higher Education is the leading association for the advancement, health, and sustainability of the student affairs profession. Student affairs is a critical component of the higher education experience, collaborating with colleagues across institutions of higher education to offer students valuable learning opportunities, meaningful social engagements, and safe and inclusive environments. NASPA's Public Policy Agenda is grounded in a commitment to ensuring opportunity for all institutional members' students and a belief that higher education is a great benefit to both individuals and society.