



# MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

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May 27, 2016

The Honorable Loretta E. Lynch  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

The Honorable John B. King, Jr.  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Attorney General Lynch and Secretary King,

Subordinates within your Departments on May 13, 2016 released what they styled a “Dear Colleague” letter decreeing certain “legal obligations” of schools “at all educational levels, including school districts, colleges, and universities” that receive federal funding.

The letter purports to recite rules that schools must follow concerning access for transgender students to “restrooms, locker rooms, shower facilities, housing,” and the like. For example, with regard to “**Restrooms and Locker Rooms**” (the bolding and capitalization is from the “Dear Colleague” communication itself), the letter states that a school “must allow transgender students access to such facilities consistent with their gender identity” as determined by the “individual’s internal sense of gender,” and further specifies that “[a] school may not require transgender students ... to use individual user facilities when other students are not required to do so.”

This attempt to nationalize and politicize the way schools address gender identity issues down to the level of school locker rooms, showers, and bathrooms might be dismissed as simple bureaucratic arrogance were it not so potentially harmful to our civic discourse and to the important rights and needs of all the school children involved. Your assistants apparently have concluded that people of good faith across this country, informed by the basic decency and common sense of their communities, cannot be trusted to work through any particular locker room problems of this sort; instead, the premise of the letter is that local solutions undertaken in good faith must be displaced by edict from Washington, D.C.

As the Chief law officer of the State of Ohio, I write to advise you that this judgment of the “Dear Colleague” letter is wrong, both in its elitist disregard for our 21<sup>st</sup> Century communities and as a matter of law. The letter says that a school’s “desire to accommodate others’ discomfort cannot justify a policy” other than that required by the letter’s “guidance” – but in fact, our State and our communities are much better equipped on these matters than even the most well intentioned federal “Principal Deputy Assistant Attorney General” or “Assistant Secretary” to

advance the important dignity and privacy interests of every student-- of all students -- at a school in our State.

The “Dear Colleague” letter reports, with emphasis, that “ED and DOJ (the Departments) have determined that this letter is *significant guidance*.” Significant it may be, but it is not law. To impose a national policy as “significant” as the writers would desire, proponents must obtain passage of legislation by both houses of Congress that then is submitted to the President for signature or veto. Further, the federal government cannot use its spending authority to impose administrative conditions on States, at least absent clear and explicit statutory text. Here, Congress has not enacted a federal decree along the lines the letter advocates, and I am not aware that the Administration has even proposed such legislation. Indeed, the directives have not even gone through the process of notice and comment rulemaking as would be required by the Administrative Procedure Act were the rules consistent with and authorized by legislation.

Rather than heavy-handed federal bureaucratic action guaranteeing prolonged controversy and litigation over locker room regulation, we need to let our communities sort out how best to advance the dignity and privacy interests of all students as appropriate to the differing contexts presented from one circumstance to the next. I urge you to take a step back and reconsider the unlawful and ill-advised federal decree that the Dear Colleague letter seeks to impose.

If your Departments act against our State contrary to law, I will defend vigorously the interests of the State of Ohio. Again, the federal government does not need and is not empowered to make every decision for every social institution in our country: There are many, many questions that, consistent with constitutional guarantees, are best left to the decent, commonsense judgment of individuals and communities at the state and local level. Under the laws of the United States, how schools work to handle locker room questions involving students’ gender identities is one such matter.

Very respectfully yours,

A handwritten signature in blue ink that reads "Mike DeWine". The signature is written in a cursive, flowing style.

Mike DeWine  
Ohio Attorney General