

## NASPA Position on Protection of Trans Individuals' Rights

The tenuous nature of trans 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 Secretary of Education Betsy DeVos rescinded the May 2016 DCL in February 2017 and one year later the ED Office for Civil Rights (OCR) announced that they would no longer consider cases involving trans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. The increasing amount of 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>3</sup> as well as efforts to restrict trans individuals' rights under the guise of religious freedom create a hostile environment for transgender individuals across the country. When combined with President Trump's repeated attempts to bar trans individuals from serving in our nation's armed forces, these actions represent a substantial reversal of civil rights protections for trans individuals.

NASPA's priorities for the protection of trans student rights include:

***Reinstate Obama-era protections for trans 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 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 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 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 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

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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/rpi/posts/state-legislative-analysis-bathroom-bills>



LGBTQ individuals. During the 2018 state legislative session, Oklahoma introduced a measure (OK SB 1250)<sup>4</sup> restricting bathroom access for trans individuals under the guise of religious freedom, and while it did not move forward, represents continued efforts to restrict trans individuals' rights as a form of religious freedom. 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 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 take action 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.

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<sup>4</sup> <https://legiscan.com/OK/text/SB1250/2018>

