

## Background Brief: Trans and Non-Binary Individuals' Rights

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" and doing so without "requiring students to produce ... identification documents in order to treat them consistent with their gender identity." The DCL's open acknowledgement of the rights of trans students<sup>3</sup> was just one of many local<sup>4</sup>, state<sup>5</sup>, and federal<sup>6</sup> actions to protect trans and gender non-binary individuals.

At the same time, a wave of backlash was also sweeping the country as lawmakers introduced policies and legislation that quickly became known as "bathroom bills"<sup>7</sup> designed to restrict access to bathroom and locker room facilities based on the gender an individual was assigned at birth. As is expected when legal guidance is changing, multiple court cases challenging discriminatory bathroom policies were filed (e.g., *GG v. Gloucester County School Board*<sup>8</sup>; *Whitaker v. Kenosha Unified School District*<sup>9</sup>; *Evancho, et al. v Pine-Richland School District*<sup>10</sup>). The Supreme Court (SCOTUS) agreed to hear arguments in *GG v. Gloucester County*

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<sup>1</sup> U.S. Department of Education. (May 13, 2016; archived). Dear Colleague Letter on Transgender Students.

<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> Title IX is also the primary vehicle governing campus responsibilities related to sexual assault prevention and response; a separate background brief is available covering changes in responsibilities around campus sexual assault adjudication for those interested in recent developments.

<sup>4</sup> Harrison, S. (February 22, 2016). Charlotte City Council approves LGBT protections in 7-4 vote. The Charlotte Observer: <http://www.charlotteobserver.com/news/politics-government/article61786967.html>

<sup>5</sup> Transgender Law Center Equality Maps: <https://transgenderlawcenter.org/equalitymap>

<sup>6</sup> White House. (July 21, 2014; archived). President Obama Signs a New Executive Order to Protect LGBT Workers. <https://obamawhitehouse.archives.gov/blog/2014/07/21/president-obama-signs-new-executive-order-protect-lgbt-workers>

<sup>7</sup> Ali, D. (March 2, 2017). State Legislative Analysis: Bathroom Bills. NASPA: <https://www.naspa.org/rpi/posts/state-legislative-analysis-bathroom-bills>; Ali, D. (March 1, 2018). The Status of Trans Rights in 2018. NASPA: <https://www.naspa.org/rpi/posts/the-status-of-trans-rights-in-2018>

<sup>8</sup> *GG v. Gloucester County School Board*: <https://www.aclu.org/cases/gg-v-gloucester-county-school-board>

<sup>9</sup> *Whitaker v. Kenosha Unified School District*: <https://transgenderlawcenter.org/legal/youth/whitaker>

<sup>10</sup> *Evancho, et al. v Pine-Richland School District*: <https://www.lambdalegal.org/in-court/cases/evancho-v-pine-richland-school-district>

*School Board* in March 2017, a move many hoped would bring final clarity, but actions by the Trump administration precluded SCOTUS from ruling in the case.

The tenuous nature of trans and gender non-binary students' rights has remained in the spotlight for the last several years, with media attention focusing both on the discrimination faced by LGBTQIA students in education and the ways that those students are fighting back. *The Washington Post* recently highlighted<sup>11</sup> the ways that trans and gender non-binary high school students are continuing to challenge their schools' discriminatory policies by tackling their existing locker room policies. The article is a good overview of both the individual challenges faced by one trans student and his family in Maryland, as well as a reminder about the students who came before him and brought discrimination cases against their schools. The article should serve as notice to student affairs practitioners that despite the rollback of protections<sup>12</sup> by ED in 2017 and 2018, trans and gender non-binary students continue to arrive at institutions of higher education with expectations of equal treatment and provision of accessible facilities.

Indeed, according to *Discrimination in America: Experiences and Views of LGBTQ Americans*<sup>13</sup>, a recent study conducted by NPR, the Robert Wood Johnson Foundation, and the Harvard School of Public Health (NPR/RWJ/HSPH report), 58% of LGBTQIA<sup>14</sup> survey participants indicated that LGB individuals are discriminated against in college, and 64% indicated that trans students, in particular, are discriminated against in college. This isn't to say that campuses haven't taken important steps to support trans and LGB students. Many institutions have established LGBTQIA Resource Centers and implemented trans and gender non-binary friendly policies. But the data in the NPR/RWJ/HSPH report is an important indicator for student affairs administrators that many LGBTQIA individuals still experience, and witness their peers experiencing, discrimination at our institutions.

It is against this troubling policy backdrop that NASPA conducted an introductory study in spring 2017 of campus efforts to address trans and gender non-binary students' rights. The preliminary data from this study was discussed at the NASPA annual conference in 2017 and

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<sup>11</sup> Marimow, A. (April 26, 2018). Battle over transgender student rights moves to high school locker rooms. Washington Post: [https://www.washingtonpost.com/local/public-safety/battle-over-transgender-student-rights-moves-to-high-school-locker-rooms/2018/04/25/b319365a-3f29-11e8-974f-aacd97698cef\\_story.html](https://www.washingtonpost.com/local/public-safety/battle-over-transgender-student-rights-moves-to-high-school-locker-rooms/2018/04/25/b319365a-3f29-11e8-974f-aacd97698cef_story.html)

<sup>12</sup> U.S. Department of Education. (February 22, 2017). Dear Colleague Letter re Trans Student Rights. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>

<sup>13</sup> NPR, Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health. (November 2017). *Discrimination in America: Experiences and Views of LGBTQ Americans*. <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2017/11/NPR-RWJF-HSPH-Discrimination-LGBTQ-Final-Report.pdf>

<sup>14</sup> Typically, NASPA would use the acronym LGBTQIA, however the study conducted by NPR, the Robert Wood Johnson Foundation, and the Harvard School of Public Health uses LGBTQ to refer to the same population. In order to avoid possible misstatement of the study results, we will use the acronym LGBTQ when referring to the findings of the study.

highlighted in *Dialogues About Equity, Civility, and Safety: Contested Issues in Student Affairs*.<sup>15</sup> The respondents indicated that many campuses put trans students' rights working groups in place after the Obama administration guidance was issued. At the time of the survey, many of those working groups were still engaged in efforts to improve campus climate for their trans and gender non-binary students, despite the rollback of guidance by ED under President Trump. It is promising, and likely reassuring for trans and gender non-binary students that campuses are still pushing toward equitable and accessible policies and facilities on their campuses despite the change in focus by the current administration.

This brief provides an overview of erosions of trans and gender non-binary student rights and protections at the federal level, attempts to further restrict rights at the state level, and actions taken to push back against discriminatory policies in the state and federal courts.

### Federal Erosions of Trans and Gender Non-Binary Rights & Protections

Concerns regarding how the Trump Administration would address civil rights cases were raised during Secretary of Education Betsy DeVos's confirmation hearings,<sup>16</sup> the appointment of Candice Jackson<sup>17</sup> to Acting Assistant Secretary of Education for Civil Rights, the initial attempts to bar trans individuals from serving in the armed forces,<sup>18</sup> and the October 2017 reversal<sup>19</sup> of the Department of Justice (DOJ) guidance extending Title VII employment anti-discrimination protection to include sexual orientation and gender identity.

In February 2017, Secretary DeVos rescinded<sup>12</sup> the Obama administration's guidance protecting trans and gender non-binary students. In February 2018, ED's Office of Civil Rights (OCR) further walked back protections for trans students by indicating it would refuse to investigate student complaints about discriminatory bathroom policies.<sup>20</sup> Department Spokeswoman Liz Hill confirmed to several media sources that while the harassment or penalization of students for

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<sup>15</sup> Parnell, A., and Dunlap, J. (2019). From Guns to Transgender Students' Rights: When Policy and Personal Positions Do Not Align. In Magolda, P. M., Magolda, M. B. B., & Carducci, R. (Eds.). (2019). *Contested Issues in Troubled Times: Student Affairs Dialogues on Equity, Civility, and Safety*. Stylus Publishing.

<sup>16</sup> Carney, J. (February 7, 2017). Booker: 'No confidence' on DeVos's support for civil rights office. The Hill: <http://thehill.com/blogs/floor-action/senate/318202-booker-no-confidence-on-devoss-support-for-civil-rights-office>

<sup>17</sup> Waldman, A. (April 14, 2017). DeVos Pick to Head Civil Rights Office Once Said She Faced Discrimination for Being White. ProPublica: <https://www.propublica.org/article/devos-candice-jackson-civil-rights-office-education-department>

<sup>18</sup> Diamond, J. (August 25, 2017). Trump signs directive banning transgender military recruits. CNN: <http://www.cnn.com/2017/08/25/politics/trump-transgender-military/index.html>

<sup>19</sup> Jarrett, L. (October 5, 2017). Sessions says civil rights law doesn't protect transgender workers. CNN: <http://www.cnn.com/2017/10/05/politics/jeff-sessions-transgender-title-vii/index.html>

<sup>20</sup> Balingit, M. (February 12, 2018). Education Department no longer investigating transgender bathroom complaints. Washington Post: <https://www.washingtonpost.com/news/education/wp/2018/02/12/education-department-will-no-longer-investigate-transgender-bathroom-complaints/>

“failing to conform to sex-based stereotypes” remains sex discrimination prohibited by Title IX, the requirements of students to use bathroom or changing facilities corresponding to their sex assigned at birth is not.

In response to the February 2017 changes in guidance from OCR, legal and community advocacy groups<sup>21</sup> along with institutions of higher learning<sup>22</sup> across the country released statements condemning the decision and hundreds of people took to the streets<sup>23</sup> in protest. Despite these protests, the February rescission, which offered no supplemental guidance in its place, resulted in a political domino effect. Citing the change in guidance, the Supreme Court remanded *G.G. vs Gloucester County School Board*<sup>8</sup>, which could have set a national precedent to protect trans and gender non-binary students' rights to bathroom and changing facility access, back to the lower court for decision.

At the same time, the Office for Civil Rights (OCR) halted several Title IX investigations regarding trans students. Reports began emerging in summer 2017 that OCR was closing trans student discrimination complaint cases<sup>24</sup>, leading to additional apprehension for trans and gender non-binary students. OCR dismissed a case in Ohio from 2016<sup>25</sup> where an elementary school student was wrongly restricted from using the girls' bathroom and was subsequently harassed. The case was withdrawn as the claims of discrimination were based on the now-rescinded May 2016 Dear Colleague Letter<sup>1</sup> extending Title IX sex discrimination protections to trans individuals. Similarly, the *Washington Post* reported that an investigation regarding a locker room use case in Palatine, IL,<sup>26</sup> was dropped as well.

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<sup>21</sup> The Leadership Conference on Civil & Human Rights. (February 22, 2017). Civil and Human Rights Community Condemns Rescission of Title IX Guidance Clarifying Protections for Transgender Students. <https://civilrights.org/civil-and-human-rights-community-condemns-rescission-of-title-ix-guidance-clarifying-protections-for-transgender-students/>

<sup>22</sup> Wake Forest University. (February 23, 2017). Reaffirming support for our transgender community. <http://inside.wfu.edu/2017/02/message-reaffirming-support-for-our-transgender-community/>

<sup>23</sup> James, T. (March 3, 2017). Chicago rally for transgender rights. Chicago Tribune: <http://www.chicagotribune.com/news/local/breaking/ct-transgender-rights-rally-chicago-photos-20170303-photogallery.html>

<sup>24</sup> Harris, A. (June 15, 2017). Memo Outlines Education Dept. Plans to Scale Back Civil-Rights Efforts. The Chronicle of Higher Education: <http://www.chronicle.com/blogs/ticker/memo-outlines-education-dept-plans-to-scale-back-civil-rights-efforts/118937>

<sup>25</sup> Brown, E. (June 17, 2017). Education Dept. closes transgender student cases as it pushes to scale back civil rights investigations. Washington Post: [https://www.washingtonpost.com/local/education/education-dept-closes-transgender-student-cases-as-it-pushes-to-scale-back-civil-rights-investigations/2017/06/17/08e10de2-5367-11e7-91eb-9611861a988f\\_story.html](https://www.washingtonpost.com/local/education/education-dept-closes-transgender-student-cases-as-it-pushes-to-scale-back-civil-rights-investigations/2017/06/17/08e10de2-5367-11e7-91eb-9611861a988f_story.html)

<sup>26</sup> Lutton, L. (March 31, 2017). Why Palatine Became A Battleground Over Transgender Student Rights. WJCT: <http://news.wjct.org/post/why-palatine-became-battleground-over-transgender-student-rights>

Rollbacks to trans gender non-binary rights continued in June 2017<sup>27</sup> when an internal OCR staff memo instructed investigators to follow Title IX protocol, which, in accordance with the February rescission no longer extended to trans students' rights to occupy the restroom or changing facility of appropriate for their gender identity. Then-acting assistant secretary for civil rights Candace Jackson emphasized that, in spite of the rescission of the May 2016 Dear Colleague Letter, the rights of trans and gender non-binary students would still be protected<sup>28</sup>. However, an internal memo in early June 2017 (parts I<sup>29</sup> & II<sup>30</sup>) to regional OCR directors and corresponding discrimination case closures were perceived by advocates as an indication that OCR intended to further limit its protective jurisdiction. While the memos outlined certain prohibitive incidents of bullying and harassment such as pronoun misuse or sex stereotyping, they failed to mention cases dealing with facilities use. Further, the broadness of language involving gender discrimination, along with a push for a "case-by-case" approach, creates room for OCR to seemingly arbitrarily choose which cases fall under their jurisdiction.

There has also been speculation about changes in guidance around data collection for investigations. The June 2017 internal memos indicated that in order to streamline the investigation process, OCR investigators will no longer be expected to obtain three years of past complaint data from an institution. ED Spokeswoman Elizabeth Hill told *The Chronicle of Higher Education*<sup>31</sup> that the new method eliminates "an artificial requirement to collect several years of data when many complaints can be adequately addressed much more efficiently and quickly". While a case-by-case method may offer more discretion overall, it precludes investigators from identifying or establishing where patterns of discrimination may occur at an institution. The memo states that "OCR will only apply a 'systemic' or 'class-action' approach where the individual complaint allegations themselves raise systemic or class-wide issues." This new guidance may indeed quicken the pace at which complaints are investigated, but some

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<sup>27</sup> Resmovits, J. (June 16, 2017). Trump administration narrows civil rights investigations. Los Angeles Times: <http://www.latimes.com/local/education/la-essential-education-updates-southern-trump-s-education-department-pulls-back-1497572246-htmstory.html>

<sup>28</sup> Brown, E. (June 16, 2017). Trump administration's approach to handling transgender students' civil rights complaints is described in memo. Washington Post: <https://www.washingtonpost.com/news/education/wp/2017/06/16/education-department-memo-lays-out-trump-administrations-approach-to-handling-transgender-students-civil-rights-complaints/>

<sup>29</sup> U.S. Department of Education. (June 6, 2017). OCR Instructions to the Field re Complaints Involving Transgender Students. Uploaded to Scribd by user rhklein: [https://www.scribd.com/document/351479120/Ocr-Instructions#from\\_embed](https://www.scribd.com/document/351479120/Ocr-Instructions#from_embed)

<sup>30</sup> U.S. Department of Education. (n.d.) OCR Instructions to the Field re Scope of Complaints. Uploaded to Document Cloud by Annie Waldman, ProPublica: <https://www.propublica.org/documents/item/3863019-doc00742420170609111824.html>

<sup>31</sup> Harris, A. (June 15, 2017). Memo Outlines Education Dept. Plans to Scale Back Civil-Rights Efforts. The Chronicle of Higher Education: <http://www.chronicle.com/blogs/ticker/memo-outlines-education-dept-plans-to-scale-back-civil-rights-efforts/118937>

worry that it puts an unfair onus on the complainant to identify the pervasiveness of institutional oppression<sup>32</sup>.

Further, while streamlining complaints makes sense to address the sizable backlog<sup>33</sup> in the department, cutting resources does not. *Diverse Issues in Higher Education* compiled data<sup>34</sup> to demonstrate that while the number of OCR complaints have risen by the thousands in the last few years, resulting in a large backlog of open cases, the ED 2018 Budget Request sought drastic cuts to OCR staff, maintaining that the remaining staff will be responsible for the investigation of complaints. If Ms. Jackson's goal was to address the backlog, then the department would require additional resources so it can continue to address complaints in a holistic way. The release of this ambiguous guidance in tandem with the possibility for caseload cherry-picking, suggested additional restrictions to trans and gender non-binary protections within OCR.

In February 2018, several news outlets<sup>35</sup> reported that ED was officially taking a stance regarding bathroom access. These reports were confirmed by ED spokeswoman Liz Hill, who told NPR<sup>36</sup> that while harassment of transgender students would fall under Title IX, "In the case of bathrooms, however, long-standing regulations provide that separating facilities on the basis of sex is not a form of discrimination prohibited by Title IX."

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>37</sup> and in November 2018 the Department of Education proposed the removal of the requirement for institutions to submit a letter to clarify exemption under Title IX, exacerbating potential risks for trans and gender non-binary students. This series of

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<sup>32</sup> Kreighbaum, A. (June 16, 2017). Not Looking for Patterns. Inside Higher Ed:

<https://www.insidehighered.com/news/2017/06/16/education-department-suggests-less-expansive-approach-ocr-investigations>

<sup>33</sup> Kingkade, T. (December 6, 2017). The Education Department Has A Huge Backlog Of Sexual Assault Investigations That's Still Growing. HuffPost: [http://www.huffingtonpost.com/2015/05/05/sexual-assault-backlog-education-department\\_n\\_7215748.html](http://www.huffingtonpost.com/2015/05/05/sexual-assault-backlog-education-department_n_7215748.html)

<sup>34</sup> Abdul-Alim, J. (June 19, 2017). Civil Rights Advocates: Scaling Back Higher Ed Investigations 'an Injustice'. *Diverse Issues in Higher Education*: <http://diverseeducation.com/article/97961/>

<sup>35</sup> Taylor, J. (February 12, 2018). Department of Education will reject transgender bathroom complaints. LGBTQ Nation: <https://www.lgbtqnation.com/2018/02/department-education-will-reject-transgender-bathroom-complaints/>; Holden, D. (February 12, 2018). The Education Department Officially Says It Will Reject Transgender Student Bathroom Complaints. BuzzFeed News: <https://www.buzzfeed.com/dominicholden/edu-dept-trans-student-bathrooms>

<sup>36</sup> Turner, C., & Kamenetz, A. (February 12, 2018). The Education Department Says It Won't Act On Transgender Student Bathroom Access. NPR: <https://www.npr.org/sections/ed/2018/02/12/585181704/the-education-department-says-it-wont-act-on-transgender-student-bathroom-access>

<sup>37</sup> NASPA – Student Affairs Administrators in Higher Education. (October 24, 2018). <https://www.naspa.org/about/blog/naspa-opposes-actions-that-restrict-rights-of-transgender-and-gender-non-bi>

decisions came on the heels of a decidedly anti-trans shift in national climate supported in part by President Trump's suggestion that trans members of the military<sup>38</sup> be forced to serve according to the gender they were assigned at birth. Initially held from taking effect through an April 2018 court decision,<sup>39</sup> in January 2019 the Supreme Court of the United States (SCOTUS) lifted the injunction giving the military the option of limiting the right for trans and gender non-binary persons to serve while the case continues to be challenged in the lower courts.<sup>40</sup> Repeated attempts to deny trans and gender non-binary individuals their civil rights adds considerably to the mental health burden carried by trans students.

Rollbacks to protections under Title IX were further implicated in the fall of 2018 through changes to religious exemption within ED's proposed rule on Nondiscrimination on the Basis of Sex in Education Programs Receiving Federal Financial Assistance (Title IX proposed rule).<sup>41</sup> Since 1979, religious institutions have been allowed to request an exemption from compliance with Title IX if compliance is in conflict with the institution's religious tenets. Prior to and during the Obama administration, institutional requests for confirmation of the exemption, which were obtained by institutions submitting a letter to the Department of Education, were relatively rare. In 2014, Title IX protections were expanded to include protection for transgender students, which resulted in 232 schools requesting religious exemption from Title IX. In 2016, largely thanks to the activism of trans and gender non-binary students and the Human Rights Campaign, the Department began publishing the list of institutions<sup>42</sup> that had been granted the exemption. Fearing damage to their reputations, the publication of the list led to some institutions withdrawing their requests for exemption.<sup>43</sup> The argument was that some schools were using religious exemptions to justify discriminating against trans and gender non-binary students, LGBTQIA students, and pregnant students. The National Center for

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<sup>38</sup> Cooper, H., and Gibbons-Neff, T. (March 24, 2018). Trump Approves New Limits on Transgender Troops in the Military. The New York Times: <https://www.nytimes.com/2018/03/24/us/politics/trump-transgender-military.html>

<sup>39</sup> Larson, E. (April 14, 2018). Trump's Military Trans Ban Same as Before, Judge Says. Bloomberg: <https://www.bloomberg.com/news/articles/2018-04-14/trump-s-updated-military-trans-ban-is-same-as-before-judge-says>

<sup>40</sup> Zurcher, A. (January 22, 2019). US Supreme Court allows Trump military transgender ban. BBC News: <https://www.bbc.com/news/world-us-canada-46963426>

<sup>41</sup> U.S. Department of Education. (November 28, 2018). Proposed Rule: Nondiscrimination on the Basis of Sex in Education Programs Receiving Federal Financial Assistance. <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

<sup>42</sup> Devaney, T. (April 29, 2016). Obama Administration Outs Religious Schools that are Unfriendly. The Hill: <https://thehill.com/regulation/278227-obama-administration-outs-religious-schools-that-are-unfriendly-to-transgender>

<sup>43</sup> Jaschik, S. (July 26, 2016). Pepperdine Drops its Title IX Exemption. Inside Higher Ed: <https://www.insidehighered.com/quicktakes/2016/07/26/pepperdine-drops-its-title-ix-exemption>

Transgender Equality and the Movement Advancement Project have provided more detail in their timeline of federal enforcement of LGBTQIA rights under Title IX.<sup>44</sup>

The list of schools that had requested Title IX exemption confirmations has not been updated since December 2016 on the Department's website,<sup>45</sup> which was concerning for those who said that students and their families have a right to know before enrolling if an institution has the ability to discriminate against them. The fall 2018 Title IX proposed rule went a step further by removing the requirement for institutions to submit a letter to confirm exemption under Title IX. Should the rule go into effect as it was proposed, this change in religious exemption is concerning for pregnant students, gender non-binary students, transgender students and LGBTQIA-identified students, whose rights may be denied at exempt institutions. The Department states in the proposed rule that institutions that come under investigation for discrimination under Title IX can attest to their exemption as part of the complaint process, without having received prior confirmation from the Department of its exempt status. Currently, the proposed regulation is held in the federal rulemaking process where ED must respond to public comments of substance and undergo further cost-benefit analysis before releasing a final rule.<sup>46</sup>

## State Measures Regarding Trans and Non-Binary Persons Rights & Protections

Rollbacks at the federal level appear to correlate with an onslaught of discriminatory "bathroom bills" which started appearing at the state-level during the 2017 and 2018 legislative cycles. Legislation followed the model of North Carolina's notorious HB 2<sup>47</sup>, later replaced with a slightly lighter, though still discriminatory policy<sup>48</sup>, limiting multi-occupancy bathroom access based on sex as assigned at birth. NASPA's Policy and Advocacy Team tracked various iterations of bathroom bills across 16 states in 2017, none of which moved forward to pass, despite Texas

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<sup>44</sup> Movement Advancement Project and National Center for Transgender Equality (n.d.) Title IX, Religious Exemptions & Campus Climate: LGBT Protections in Higher Ed. LGBT MAP: <http://www.lgbtmap.org/file/Title-IX-Religion-Higher-Education-Final.pdf>

<sup>45</sup> Karas, K. (July 2, 2018). Title IX Religious Exemptions and the Transgender Student. Cohen Seglias Pallas Greenhall & Ferman PC: <https://www.investigationslawblog.com/2018/07/title-ix-religious-exemptions-transgender-student/>

<sup>46</sup> ICF Consulting. (n.d.) The Reg Map: Informal Rulemaking. <https://www.reginfo.gov/public/reginfo/Regmap/regmap.pdf>

<sup>47</sup> NC HB 2 (2016): <https://www.ncleg.net/Sessions/2015E2/Bills/House/PDF/H2v3.pdf>

<sup>48</sup> Silva, D. (March 30, 2017). HB2 Repeal: North Carolina Overturns Controversial 'Bathroom Bill'. NBC News: <https://www.nbcnews.com/news/us-news/hb2-repeal-north-carolina-legislature-votes-overturn-controversial-bathroom-bill-n740546>

bringing two measures (TX HB 46<sup>49</sup> and TX HB 50<sup>50</sup>) into special session. In 2018, NASPA expanded tracking to include additional measures affecting the trans and gender non-binary community in 14 states. Three of the tracked measures passed, all worked in favor of the trans and gender non-binary community. The first, Vermont House Bill 333,<sup>51</sup> passed in May 2018, requires all single-user bathrooms in public buildings or places of public accommodation to be marked as gender-neutral. The second, Hawaii House Bill 1489,<sup>52</sup> passed in July 2018, expanded anti-discrimination to include gender identity or expression and created a study on how other jurisdictions oversee Title IX enforcement. To note, the measure was substantially trimmed from its first few drafts, limiting its impact.<sup>53</sup> Finally, New Jersey Senate Bill 705<sup>54</sup> also passed in July 2018, established New Jersey's Transgender Equality Task Force to assess legal and societal barriers to equality and provide recommendations to the New Jersey Legislature.

The 2018 midterm election resulted in a historic ballot measure when Massachusetts<sup>55</sup> upheld a trans and gender non-binary inclusive initiative to prohibit discrimination based on gender identity in public facilities. The election also changed the likelihood of Texas reintroducing and pushing forward bathroom bill legislation as lawmakers in support of the discriminatory legislation were voted out of office and Governor Greg Abbott indicated that passing a bathroom bill was not a part of his 2019 agenda.<sup>56</sup>

Other states have followed suit, as only Indiana (IN HB 1525)<sup>57</sup> has introduced a traditional 'bathroom bill' in 2019. Measures moving forward in 7 states primarily work to expand the rights of trans and gender non-binary individuals, through the creation of LGBTQIA focused curriculum in public schools in New York (NY A 4744),<sup>58</sup> to the expansion of the collection of data and research in the District of Columbia (DC B 840)<sup>59</sup> and Hawaii (HI SB 1042,<sup>60</sup> HI HB

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<sup>49</sup> TX HB 46 (2017): <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=851&Bill=HB46>

<sup>50</sup> TX HB 50 (2017): <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=851&Bill=HB50>

<sup>51</sup> VT HB 333 (2018): <https://legislature.vermont.gov/bill/status/2018/H.333>

<sup>52</sup> HI HB 1489 (2018): <https://legiscan.com/HI/text/HB1489/id/1700262>

<sup>53</sup> Lee, S. (May 2, 2018). Legislature Approves Bill to Protect Against Sex-based Discrimination. Honolulu Civil Beat: <http://www.civilbeat.org/2018/05/legislature-approves-bill-to-protect-against-sex-based-discrimination/>

<sup>54</sup> NJ 705 (2018): <https://legiscan.com/NJ/bill/S705/2018>

<sup>55</sup> Jaschik, S. (November 7, 2018). Massachusetts keeps trans protections. Inside Higher Ed: <https://www.insidehighered.com/news/2018/11/07/massachusetts-voters-keep-protections-transgender-people>

<sup>56</sup> Herskovitz, J. (September 28, 2018). Texas governor says 'bathroom bill' no longer on his agenda. Reuters: <https://www.reuters.com/article/us-texas-lgbt/texas-governor-says-bathroom-bill-no-longer-on-his-agenda-idUSKCN1M901Y>

<sup>57</sup> IN HB 1525 (2019): <http://iga.in.gov/legislative/2019/bills/house/1525>

<sup>58</sup> NY A 4744 (2019): <https://legiscan.com/NY/bill/A04744/2019>

<sup>59</sup> DC B 840 (2018): <http://lims.dccouncil.us/Legislation/B22-0840>

<sup>60</sup> HI SB 1042 (2019): <https://legiscan.com/HI/bill/SB1042/2019>

483<sup>61</sup>), to the protection of bathroom and facility use by trans and gender non-binary individuals in New York (NY A 5240)<sup>62</sup> and Connecticut (CT HB 6219).<sup>63</sup>

State legislatures may still move to adopt discriminatory legislation in 2019 and 2020, aside from that of bathroom bills, such as a Georgia SB 221,<sup>64</sup> a stringent religious liberty measure supported by Governor Brian Kemp that would allow Georgia businesses to refuse serving LGBTQIA individuals, or measures to limit same-sex couples from fostering youth.

## Judicial Proceedings on Trans and Gender Non-Binary Student Rights & Protections

While federal agency action paints a dire picture for the future of trans and gender non-binary rights, the more recent state action and judicial proceedings indicate hope is not lost. Local and judicial proceedings continue to offer a pathway of inclusivity for trans and gender non-binary individuals. In May 2017, the 7th Circuit Court interpreted Title IX sex discrimination and the 14th Amendment to extend to trans individuals in *Whitaker vs. Kenosha Unified School District*<sup>65</sup>, citing that Wisconsin was in violation of Title IX sex discrimination prohibitions by denying Ashton Whitaker<sup>66</sup>, a senior high school student in the case, from using the restroom corresponding with his gender identity. If the case receives a similarly favorable decision from the Supreme Court, trans and gender non-binary protections under Title IX will be enforced as existing law. In November 2017, Rachel Tudor<sup>67</sup> was awarded \$1.1 million after having been found to have been discriminated against her place of work, Southeastern Oklahoma State University. A number of court rulings in the Tudor case found that Title VII anti-discrimination laws in employment extend to sexual orientation and gender identity.

As some potentially landmark cases were making their way through the court system, President Trump was elected and took office. As noted previously, the Trump Administration quickly began to roll-back the federal guidance and protection for trans and gender non-binary individuals. In March 2017, SCOTUS reversed their decision to hear *GG v. Gloucester County*

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<sup>61</sup> HI HB 483 (2019): <https://legiscan.com/HI/bill/HB483/2019>

<sup>62</sup> NY A 5240 (2019): <https://legiscan.com/NY/bill/A05240/2019>

<sup>63</sup> CT HB 6219 (2019): <https://legiscan.com/CT/bill/HB06219/2019>

<sup>64</sup> GA SB 221: <http://www.legis.ga.gov/legislation/en-US/Display/20192020/SB/221>

<sup>65</sup> Brown, E. (May 30, 2017). Appeals court sides with transgender student in Wis. school bathroom case. The Washington Post: [https://www.washingtonpost.com/local/education/appeals-court-sides-with-transgender-student-in-wis-school-bathroom-case/2017/05/30/3f5f6e98-4572-11e7-bcde-624ad94170ab\\_story.html](https://www.washingtonpost.com/local/education/appeals-court-sides-with-transgender-student-in-wis-school-bathroom-case/2017/05/30/3f5f6e98-4572-11e7-bcde-624ad94170ab_story.html)

<sup>66</sup> Lombardo, C. (May 31, 2017). Transgender Student Wins Appeal in Final Week of School. US News: <https://www.usnews.com/news/best-states/wisconsin/articles/2017-05-30/transgender-student-at-wisconsin-high-school-wins-appeal>

<sup>67</sup> Brammer, J. (November 20, 2017). Jury awards transgender professor \$1.1 million in discrimination case. NBC News: <https://www.nbcnews.com/feature/nbc-out/jury-awards-transgender-professor-1-1-million-discrimination-case-n822646>

*School Board* and remanded<sup>68</sup> the case back to the 4th Circuit Court of Appeals due to the change in OCR guidance, which the 4th Circuit Court relied on, in part, to reach their ruling in the case.

#### The Value of Federal-Level Precedent

Secretary of Education Betsy DeVos testified before the House Education and Workforce Committee in May 2018 providing comments on “Examining the Policies and Priorities of the U.S. Department of Education<sup>69</sup>.” During the hearing, Representative Jared Polis (D-CO) cited federal Appeals Court decisions, *Kenosha v. Whitaker* and *Glenn v. Brumby*<sup>70</sup>, to point to standing legal precedent regarding trans and gender non-binary protections. Secretary DeVos pointed out that these cases had not yet reached SCOTUS, and that the Department of Education would not recognize these cases as precedent until they had undergone the decision-making process through the nation’s highest court and thus, in her interpretation, became binding. While SCOTUS is the highest court with the final say on matters of federal jurisdiction, the role of lower courts and state rulings are legally binding in their jurisdictions and should not be overlooked.

The two cases cited by Representative Polis, therefore, deserve a closer look. The case of *Whitaker vs. Kenosha United School District* has been described in detail above. In the 2011 case *Glenn v. Brumby*<sup>71</sup>, a trans woman won her workplace discrimination claim under the 11th Circuit Court of Appeals, determining that discrimination against someone on the basis of gender non-conformity extends to sex-based discrimination under the Equal Protection Clause.

Despite Secretary DeVos’s opinion, the precedent established by these rulings does matter and is considered binding<sup>72</sup> for all lower courts covered by the higher court’s jurisdiction until and unless a higher court rules differently. If a case is not appealed to a higher court, or if a higher court declines to review and issue a decision on a lower court case, the ruling of the lower court stands as case law and may be used as evidence of legality in other cases. For the cases cited by Representative Polis, until and unless SCOTUS takes up either case, the rulings reached by the Appeals Courts are legally binding on all lower courts in the 7th and 11th Circuits. Even in the

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<sup>68</sup> Williams, P. (March 6, 2017). Supreme Court Rejects Gavin Grimm's Transgender Bathroom Rights Case. NBC News: <https://www.nbcnews.com/news/us-news/u-s-supreme-court-rejects-transgender-rights-case-n729556>

<sup>69</sup> U.S. House of Representatives, Education and Workforce Committee. (May 2018). Hearing: “Examining the Policies and Priorities of the U.S. Department of Education”.  
<https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=402726>

<sup>70</sup> *Glenn v. Brumby* (2011): <https://cases.justia.com/federal/appellate-courts/ca11/10-14833/201014833-2011-12-06.pdf?ts=1411120294>

<sup>71</sup> Mears, B. (December 12, 2011). Woman who underwent sex change wins workplace discrimination claim. CNN: <https://www.cnn.com/2011/12/12/us/sex-change-case/index.html>

<sup>72</sup> Georgetown University Law Center The Writing Center. (2017). Which Court is Binding? <https://www.law.georgetown.edu/wp-content/uploads/2018/07/Which-Court-is-Binding-HandoutFinal.pdf>

case of Gavin Grimm, a federal judge denied a motion to have the case dismissed<sup>73</sup> in late May 2018, finding that Gloucester High School had violated Title IX by denying him bathroom access matching his gender identity. According to the American Civil Liberties Union, who originally filed the case on behalf of Gavin Grimm, as of October 2018, the case has been reopened and is in the discovery phase.<sup>74</sup> This case is important in continuing to establish a trend toward trans and gender non-binary inclusiveness in lower court rulings. As of now, the Gloucester County School Board has not been required to update Gavin's gender identity on his school transcripts, so while he has been able to change his birth certificate and identify as male through state identification since moving to California, the lack of inclusive policies in Virginia will continue to follow him, further exemplifying the value of federal precedent.<sup>75</sup>

#### Courts Continue to Challenge Protection of Gender Identity and Bathroom Access

State and federal-level courts continue to consider trans and gender non-binary rights within public K-12 school districts. The outcome of these rulings may impact public postsecondary institutions as well. Courts have been asked to rule on the legality of trans inclusive policies in a growing number of states. In February 2019, 20 states and the District of Columbia signed onto an amicus brief in support of a Florida-based high-school student seeking public bathroom use access matching his gender identity. Highlighted 2018 cases from Maryland, Missouri, Montana, Oregon, and Pennsylvania are detailed below.

In the spring of 2018, student Max Alexander Brennan continued to push the Maryland courts<sup>76</sup> to allow for his use of the boys' locker room at his local high school in *M.A.B. v. Board of Education of Talbot County*<sup>77</sup>. While former precedent established from *GG v. Gloucester County School Board's* original case<sup>78</sup> before the 4th Circuit Court of Appeals incentivized his school to allow him use of the boys' restroom, Max was still denied locker room access. Max

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<sup>73</sup> Balingit, M. (May 22, 2018). Court sides with transgender student in his fight to use the boys' bathroom. The Washington Post: [https://www.washingtonpost.com/local/education/court-sides-with-transgender-student-in-his-fight-to-use-the-boys-bathroom/2018/05/22/96417800-5e03-11e8-9ee3-49d6d4814c4c\\_story.html](https://www.washingtonpost.com/local/education/court-sides-with-transgender-student-in-his-fight-to-use-the-boys-bathroom/2018/05/22/96417800-5e03-11e8-9ee3-49d6d4814c4c_story.html)

<sup>74</sup> American Civil Liberties Union. (February 25, 2019). *G.G. v. Gloucester County School Board*. <https://www.aclu.org/cases/gg-v-gloucester-county-school-board>

<sup>75</sup> Finley, B. (February 17, 2019). Virginia school district reconsiders transgender bathroom rules, rejects sex change on transcripts. PBS: <https://www.pbs.org/newshour/nation/virginia-school-district-reconsiders-transgender-bathroom-rules-rejects-sex-change-on-transcripts>

<sup>76</sup> Marimow, A. (April 26, 2018). Battle over transgender student rights moves to high school locker rooms. The Washington Post: [https://www.washingtonpost.com/local/public-safety/battle-over-transgender-student-rights-moves-to-high-school-locker-rooms/2018/04/25/b319365a-3f29-11e8-974f-aacd97698cef\\_story.html](https://www.washingtonpost.com/local/public-safety/battle-over-transgender-student-rights-moves-to-high-school-locker-rooms/2018/04/25/b319365a-3f29-11e8-974f-aacd97698cef_story.html)

<sup>77</sup> *M.A.B. v. Board of Education of Talbot County*: Memorandum Opinion. <https://freestate-justice.org/wp-content/uploads/2018/03/MAB-2018.03.12-Memoradum-Opinion-Denying-Motion-to-Dismiss-and-PI.pdf>

<sup>78</sup> Balingit, M. (April 19, 2016). Federal appeals court sides with transgender teen, says bathroom case can go forward. The Washington Post: [https://www.washingtonpost.com/local/education/federal-appeals-court-sides-with-transgender-teen-says-bathroom-case-can-go-forward/2016/04/19/6a873b88-f76b-11e5-9804-537defcc3cf6\\_story.html](https://www.washingtonpost.com/local/education/federal-appeals-court-sides-with-transgender-teen-says-bathroom-case-can-go-forward/2016/04/19/6a873b88-f76b-11e5-9804-537defcc3cf6_story.html)

won his case in March 2018 after a federal judge ruled that Maryland's constitution extends protections to trans and gender non-binary individuals. The outcome of *M.A.B. v. Board of Education of Talbot County*, while in favor of the trans student, was limited in that it only provided access for Max and did not provide a guarantee that locker room access would be made available according to the gender identity of all students in his school district moving forward.

Missouri's Human Rights Act<sup>79</sup> came under question this past April when the Missouri Supreme Court heard arguments for *Rachelle Appleberry v. Blue Springs R IV School District*<sup>80</sup>. The case involved a trans student in Blue Springs R-IV School District being denied access to the male restroom and locker rooms. The student was denied access even after the school district changed the student's name in their records and allowed him to participate in sports with other male students. The Missouri Human Rights Act states that "all persons within the jurisdiction of the state of Missouri are free and equal" and entitled to public facility use access such as restrooms "without discrimination or segregation because of race, color, religion, national origin, sex, ancestry, or disability." The attorney representing the student argued that should the courts decide that the law does not extend to gender identity, it could greatly affect the rights of trans and gender non-binary individuals in public institutions across the state. In February 2019, the Missouri Supreme Court found that the trans student in question sufficiently pled a claim of sex, rather than gender, discrimination, given his membership in the "male protected class."<sup>81</sup> Therefore discrimination based on gender identity continues to only be protected against at the city level in the state of Missouri.

In late spring 2018 a Montana district court judge heard testimony in the case of *Hobaugh v. Montana*<sup>82</sup>, a case brought on by the Montana Room Privacy Act, which was a ballot measure restricting public bathroom and facility use access to one's corresponding "biological sex." The complainant in *Hobaugh v. Montana*, the American Civil Liberties Union, challenged the measure before it appeared on the ballot, and the order was eventually dismissed as it did not meet qualifications for the ballot.

Two other cases heard in court in late spring 2018 also dealt with bathroom use access, but with schools' trans and gender non-binary inclusive policies being brought into question. An

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<sup>79</sup> Missouri's Human Rights Act: <http://revisor.mo.gov/main/OneSection.aspx?section=213.065&bid=34595&hl=>

<sup>80</sup> *Rachelle Appleberry v. Blue Springs R IV School District*: <https://caselaw.findlaw.com/mo-court-of-appeals/1868161.html>

<sup>81</sup> Brofksy, J, Pautler, Jr., P., and Oakes O'Brien, T. (March 1, 2019). Missouri Supreme Court Opines On Scope of Sex Discrimination Prohibited Under Missouri State Law. JD Supra: <https://www.jdsupra.com/legalnews/missouri-supreme-court-opines-on-scope-94859/>

<sup>82</sup> *Hobaugh v. Montana*: <https://www.aclu.org/cases/hobaugh-v-montana>

Oregon case, *Parents Privacy v. Dallas School District*<sup>83</sup>, pursued by Parents for Privacy and Parents' Rights in Education, was aimed against inclusive bathroom policies instituted in a local school district. The complainant in *Parents Privacy v. Dallas School District* argued that the new policies work against Title IX, in that the policies "radically changed the meaning of 'sex'" in expanding these protections to be inclusive of gender identity. The case was dismissed in July 2018 after the court found limiting facility use by trans and gender non-binary individuals to be discriminatory. Similar to the Oregon case, the parents in *Doe v. Boyertown*,<sup>84</sup> brought before the 3rd Circuit Court of Appeals in Philadelphia, claimed the school district's gender inclusive bathroom policy violates student privacy. *Doe v. Boyertown* argues that the district's "accommodation crosses a statutory and constitutional line when the District authorizes entry of one sex into the other sex's privacy facilities." In November 2018, the case was asked to be reviewed by SCOTUS.

## Higher Education and Student Affairs Professionals Role

Without a clear precedent from SCOTUS, a permanent legislative solution from Congress, or guidance from the Department of Education, states continue to grapple with interpreting sex discrimination protections under Title IX. However, current judicial outcomes show a persuasive trend in decisions that favor trans and gender non-binary rights, and court cases continue to move through the judiciary system. The refusal of the federal government to recognize and protect the rights of trans and gender non-binary individuals does not mean our institutions and states cannot step up to the task. Indeed, it is our responsibility as higher education professionals and constituents to urge our institutions and states to do so during times like these. NASPA continues to stand by our trans and gender non-binary colleagues and students.

### Institutional advocacy

The breadth of attacks, spanning all three branches of the federal government as well as state and local policies and laws, leave numerous ways<sup>85</sup> in which institutions and individuals might effectively advocate for trans and gender non-binary individuals rights. Institutions can be powerful voices in local government as well as in statehouses representing not only their students, faculty, and staff, but also through their presence and influence in communities. Letting state legislators know of institutional support for legislation, such as that which has

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<sup>83</sup> *Parents Privacy v. Dallas School District*: <https://www.aclu.org/legal-document/parents-privacy-v-dallas-school-district-no-2-complaint>

<sup>84</sup> *Doe v. Boyertown*: [https://www.aclu.org/sites/default/files/field\\_document/reply\\_brief\\_of\\_appellants.pdf](https://www.aclu.org/sites/default/files/field_document/reply_brief_of_appellants.pdf)

<sup>85</sup> NASPA – Student Affairs Professionals in Higher Education. (March 2, 2017). Statement on Trump Administration's Reversal of Transgender Student Protections and Higher Education's Response. <https://www.naspa.org/constituent-groups/posts/trump-administrations-reversal-of-trans-student-protections-and-response>

been passed or recently introduced in many states<sup>86</sup>, that adds sexual orientation and gender identity to anti-discrimination laws or opposition to “bathroom bills” is one possibility. Institutions may also request meetings with staff in state agencies responsible for ensuring anti-discrimination laws are implemented, or federal agencies such as ED or DOJ to share stories of trans and gender non-binary individuals on their campuses and how they benefit from regulations and policies that protect their rights. Higher education professionals and institutions that engage in advocacy to protect trans and gender non-binary rights help lessen the burden on trans and gender non-binary individuals themselves to do this advocacy through lawsuits and other activism, sometimes at great personal expense.

Institutions often have autonomy over their own policies<sup>87</sup> and can make public statements addressing non-discrimination in their own admissions, housing, and hiring practices. Campuses can work to ensure the availability of gender-neutral housing options, bathrooms, and locker rooms and maintain and enforce clear policies around the use of chosen names and pronouns. In 2014, the Consortium of Higher Education LGBT Resource Professionals Trans\* Policy Working Group developed a set of best practice recommendations<sup>88</sup> to assist colleges and universities in developing trans-inclusive policies and programming. The nonprofit organization Campus Pride maintains a clearinghouse of sample institutional policies<sup>89</sup> that are trans-inclusive, including policies that cover transition-related medical expenses for students and employees, changes to official campus records for name and gender, and intramural athletics policies.

#### Faculty and staff advocacy on campus

Individual faculty and staff on campus can be influential both as direct advocates for the rights of trans and gender non-binary individuals on campus and as educators, raising the visibility of trans and gender non-binary individuals and fostering learning to reduce the burden<sup>90</sup> on trans and gender non-binary individuals of educating their peers. Faculty and staff can serve on campus governance bodies responsible for crafting institutional policies to be sure that trans-inclusive language and policies are intentionally developed. Sharing stories of trans and gender non-binary individuals with campus leadership or external stakeholders to demonstrate the importance of trans inclusive policies and practices can help to humanize issues for

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<sup>86</sup> Transgender Law Center Equality Maps: <https://transgenderlawcenter.org/equalitymap>

<sup>87</sup> Beemyn, G. (2017). Necessary Practices for Supporting Trans Students. University of Massachusetts Amherst: [https://www.umass.edu/stonewall/sites/default/files/faculty\\_spring\\_17.pdf](https://www.umass.edu/stonewall/sites/default/files/faculty_spring_17.pdf)

<sup>88</sup> Consortium of Higher Education LGBT Resource Professionals Trans\* Policy Working Group. (June 10, 2014). Suggested Best Practices for Supporting Trans\* Students. [https://lgbtcampus.memberclicks.net/assets/consortium\\_suggested\\_trans\\_policy\\_recommendations-compressed.pdf](https://lgbtcampus.memberclicks.net/assets/consortium_suggested_trans_policy_recommendations-compressed.pdf)

<sup>89</sup> Campus Pride Trans Policy Clearinghouse: <https://www.campuspride.org/tpc/>

<sup>90</sup> Bird, J. (June 2017). How to talk (and listen) to transgender people. TED: [https://www.ted.com/talks/jackson\\_bird\\_how\\_to\\_talk\\_and\\_listen\\_to\\_transgender\\_people](https://www.ted.com/talks/jackson_bird_how_to_talk_and_listen_to_transgender_people)

policymakers. Partnerships with local and national community and advocacy organizations, such as Campus Pride<sup>91</sup>, the Transgender Law Center<sup>92</sup>, or the National Center for Transgender Equality<sup>93</sup>, to provide both awareness raising and services to trans and gender non-binary individuals can be a simple but effective means of advocating for trans and gender non-binary individuals. Faculty and staff may also consider hosting a study group for colleagues or students using Dr. Z Nicolazzo's Trans\* Studies in Higher Education syllabus<sup>94</sup> as a guide for participants.

#### Faculty and staff personal advocacy

Engaging in personal advocacy can take the form of contacting elected officials about specific legislation, engaging with state or federal agency staff, participating in community-based educational or advocacy organizations, or even working through your own social networks to educate and raise awareness of the barriers trans and gender non-binary individuals face. Student affairs professionals can use their professional expertise working with trans and gender non-binary individuals and use institutionally based examples to add credibility to their personal advocacy with elected officials but should take care not to identify individuals without their permission. When engaging in personal advocacy, student affairs professionals should be clear that they are not speaking as a representative of their employer or institution, either by including a statement if they are speaking or writing or adding a disclaimer in social media profiles. Other cautions about engaging in personal advocacy as a campus employee are outlined in NASPA's Research and Policy Institute blog post on NASPActs Policy Basics: Your Role in Our Representative Democracy<sup>95</sup>.

#### Supporting student advocacy and civic engagement

Just as student affairs professionals can establish connections with community organizations to provide services and resources, they can also reach out to organizations with campus-based programs to support student advocacy and civic engagement. For example the Southern Poverty Law Center<sup>96</sup> offers options for on-campus programs to help students engage in advocacy around trans and gender non-binary issues and the Transgender Law Center<sup>76</sup>, and the National Center for Transgender Equality<sup>77</sup> offer a variety of options for students and youth

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<sup>91</sup> Campus Pride: <https://www.campuspride.org/>

<sup>92</sup> Transgender Law Center: <https://transgenderlawcenter.org/>

<sup>93</sup> National Center for Transgender Equality: <http://www.transequality.org/issues/youth-students>

<sup>94</sup> Nicolazzo, Z. (n.d.) Trans\* Studies in Higher Education syllabus.

<https://docs.google.com/document/d/1uUFd5pMILT0IgvVtt9uJYmimhH2w4rZL9azrrUiqZJc/edit>

<sup>95</sup> NASPA - Student Affairs Administrators in Higher Education. (May 11, 2017). NASPActs Policy Basics: Your Role in Our Representative Democracy. <https://www.naspa.org/rpi/posts/naspacts-policy-basics-your-role-in-our-representative-democracy>

<sup>96</sup> Southern Poverty Law Center On Campus: <http://www.splconcampus.org/>

to become involved. Providing assistance<sup>97</sup> for students who may want to organize letter-writing campaigns or legislative action days in states where bathroom bills are introduced may also be an option, though student affairs professionals should speak with their campus government affairs and leadership team to be sure there are not additional laws or restrictions on their involvement as an employee. NASPA members who are interested in more resources for promoting civic learning and democratic engagement should follow the Civic Learning and Democratic Engagement (CLDE) Knowledge Community<sup>98</sup> and the NASPA Lead Initiative on CLDE<sup>99</sup>.

## 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>97</sup> Holse, B. (November 14, 2016). Legislative Advocacy 101, It's Time to Take a Stand. The Campaign Workshop: <https://www.thecampaignworkshop.com/legislative-advocacy-101>

<sup>98</sup> NASPA Civic Learning and Democratic Engagement (CLDE) Knowledge Community: <https://www.naspa.org/constituent-groups/kcs/civic-learning-and-democratic-engagement>

<sup>99</sup> NASPA Lead Initiative on CLDE: <https://www.naspa.org/constituent-groups/groups/lead-initiative>