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**Attachments:** QuERI DOE Title IX Comments .pdf

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*Bridging the gaps between research, practice, and policy in supporting LGBTQ students and families in PK-12 schools. Founded 2006*

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## QUEERING EDUCATION RESEARCH INSTITUTE Comments on Title IX

LGBTQ bullying is gender policing. Gender policing is the social process of enforcing cultural expectations for “normal” masculine and feminine expression. Various levels of aggression—from microaggressions to overt verbal harassment to physical violence—are targeted at individuals whose masculinity or femininity is perceived to violate cultural standards. These cultural standards are dependent upon enduring hetero-normative discourses that inscribe a linear relationship between sex, gender and heterosexuality. “Bullying” behaviors are not anti-social but rather highly social acts that maintain the peer boundaries for “normal” in a given context.

A renewed PK-12 school focus on Title IX could provide the policy impetus to raise questions about the roots of peer-to-peer aggression and move to addressing the gender inequities, reinforcing of binary gender, and devaluing of cultural traits marked feminine which are at the heart of LGBTQ bullying and harassment.

- **Clearly establish LGBTQ bullying as Title IX violation.**<sup>1</sup>
  - Expand on the 2010 Dear Colleague Letter addressing LGBTQ bullying adding codification of Bostock 2020 ruling.
  - Create public education campaign to inform educators of obligations to address bullying based on SOGI under Title IX.
- Establish that all students should participate in athletics consistent with gender identity for PK-12.
- Establish LGBTQ disproportionate discipline guidance under Title IX.<sup>2</sup>
- Issue new dress code guidance under Title IX<sup>3</sup>

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<sup>1</sup> Students whose genders do not normatively align with their biological sex are frequent targets of bullying and harassment. The further youth fall from idealized forms of masculinity and femininity, the more vulnerable they are to bullying as well as more severe forms of violence. LGBTQ youth are often the most vulnerable in this system. This intersects in complicated ways with race, class, ability. **Bullying needs to be understood and addressed as a form of gender regulation that reduces student opportunities for success** (Payne & Smith, 2013, 2016, 2018; Pascoe, 2013; Ringrose & Renold, 2010; Many Others.)

<sup>2</sup> LGBTQ and gender non-conforming youth are more likely to be harshly disciplined and expelled from school than cisgender heterosexual students for similar infractions (Himmelstein & Bruckner, 2011; Losen et al., 2014; Mallett, 2017; Mitchum & Moodie-Mills, 2014; Snapp et al., 2015).

<sup>3</sup> Dress code violations are often used by schools to punish LGB, transgender, and gender non-conforming students for transgressing the gender binary. Punishment for repeated dress code violations can serve as entry point to school to prison pipeline (Glickman, 2016; Others\*). *\*"Others" indicates that this is well known in LGBTQ education research and other researchers have stated the same/similar conclusions.*

- Protect GSAs. If "sex" includes gender identity and sexual orientation, then OCR can argue that discrimination against a GSA falls under Title IX, and therefore under OCR's jurisdiction.<sup>4</sup> Title IX potentially provides easier recourse than the Equal Access Act.<sup>5</sup>
- Provide guidance for inclusive and medically accurate sex education PK-12.<sup>6</sup> US Health education utilizes harmful gender stereotypes creating unequal access to appropriate health education for girls and LGBTQ students.
- Update and re-release the 2016 Office of Safe and Healthy Students document (currently archived) on how school districts can support transgender and gender-nonconforming students as Title IX compliance. Expand to PK-12.<sup>7</sup>
- As part of Title IX rule making, insure that the regulation prevents schools from inappropriately disclosing student SOGI to parents/caregivers. (This would extend and clarify guidance in the 2016 DCL on transgender students.) If necessary amend relevant FERPA regulations and add exemptions.<sup>8</sup>

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<sup>4</sup> LGBTQ youth in schools with GSAs (Gay Straight Alliances/ Gender Sexuality Alliances) report less substance use, fewer suicide attempts, and greater perceived safety than youth in schools without GSAs (Davis, Stafford, & Pullig, 2014; Heck, Flentje, & Cochran, 2011; Marx & Kettrey, 2016; Walls, Kane, & Wisneski, 2010). The Equal Access Act prevents discrimination against school-based GSAs and allows them meeting space but currently students must sue if this right is challenged. Clear Title IX coverage provides a better protection.

<sup>5</sup> LGBTQ youth in schools with GSAs (Gay Straight Alliances/ Gender Sexuality Alliances) report less substance use, fewer suicide attempts, and greater perceived safety than youth in schools without GSAs (Davis, Stafford, & Pullig, 2014; Heck, Flentje, & Cochran, 2011; Marx & Kettrey, 2016; Walls, Kane, & Wisneski, 2010). The Equal Access Act prevents discrimination against school-based GSAs and allows them meeting space but currently students must sue if this right is challenged. Clear Title IX coverage provides a better protection.

<sup>6</sup> For LGBTQ youth to experience comparable health benefits to their non-LGBTQ peers, sex education programs must be LGBTQ-inclusive. Research has found that classroom lessons on reproductive anatomy and basic functions are often inaccurate reflecting gender stereotypes and heterocentric bias.

<sup>7</sup> <https://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>.

<sup>8</sup> Revealing sexual orientation and transgender identities is an intensely personal decision. Forcing disclosure of sexual orientation or gender identity not only interferes with an individual's privacy and autonomy, but it potentially threatens the student's well-being and safety. Privacy is an essential right for lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) youth, and school policies need to reflect this. In states which require parental/caregiver notification when children bullied in school, school personnel may incorrectly believe they are obligated to report a student's sexual orientation or gender identity to their parents. Some schools and districts have policies in place requiring educators to out transgender students to parents/caregivers if their identities are to be expressed and acknowledged in school. An unintended consequence of mandating caregiver notification is that LGBTQ students are less likely to report their experiences of bullying to school staff. Students report fearing that any interaction with school staff about one's sexual orientation or gender identity—reporting bullying, meeting with a counselor, attending the GSA, wearing gender-affirming clothes in school, or requesting access to an all-gender restroom—include risks that the student's identity could be revealed to their parents/caregivers. This reduces LGBT student access to life saving

- Rescind regulatory provisions on May 2020 Title IX Sexual Violence rule making reducing the responsibility of schools to respond to complaints of sexual harassment and assault. LGBTQ+ students are at disproportionate risk for campus sexual assault and among the groups least likely to report.<sup>9</sup>
- De-archive ED list of schools claiming religious exemption under Title IX<sup>10</sup> (DOJ support for LGBTQ religious discrimination is not in alignment with sex and gender equality in schools.)
- Affirm that Title IX and other civil rights protections apply to federal private school vouchers. eg: DC voucher program.

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services and supports (Ettinghoff, 2013; Kretz, A. J., 2013; Smith & Payne, 2019; Others). Additionally, LGBTQ youth are 120% more likely than their heterosexual peers to experience homelessness (Morton, Dworsky, & Samuels, 2017); this trend is correlated with risk of family rejection due to sexual orientation and gender identity. Half of all teens get a negative reaction from their parents when they come out to them. More than 1 in 4 are thrown out of their homes. (Durso & Gates, 2012). Guidance to reduce harm is essential.

<sup>9</sup> LGBTQ+ students are at disproportionate risk for campus sexual assault and among the groups least likely to report (Hirsch & Kahn, 2020; Others).

<sup>10</sup> The public list of religious schools that have claimed exemption from Title IX and treating LGBTQ students fairly was archived in 2017.

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