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STATE GOVERNMENT COMMITTEE  
CHAIRMAN

**House of Representatives**  
Commonwealth of Pennsylvania  
Harrisburg

June 10, 2016

Governor Tom Wolf  
225 Main Capital Building

Dear Governor Wolf:

We are writing to express our consternation over the legally spurious “Dear Colleague” letter that was recently issued jointly by the U.S. Department of Education and the U.S. Department of Justice regarding the use of bathrooms by transgender students in public schools. The “Dear Colleague” letter has the support of President Obama. We now call on you to reject the President’s policy and to refrain from imposing the same on the citizens of the Commonwealth of Pennsylvania.

The issue of whether Title IX protects a student’s gender identity has already been decided by a federal court in Pennsylvania. Title IX provides that educational programs cannot discriminate “on the basis of sex.” In Johnson v. Univ. of Pittsburgh Com. Sys. of Higher Education, the federal court for the Western District Court of Pennsylvania found that Title IX’s language did not provide a basis for a transgender status claim. The Court held that “Title IX and its implementing regulations *clearly permit* schools to provide students with certain sex-segregated spaces, including bathroom and locker room facilities, to perform certain private activities and bodily functions consistent with the individual’s *birth sex*” (emphasis added). Relying on this rationale, the Court upheld the University of Pittsburgh’s policy of separating bathrooms and locker rooms on the basis of birth sex under Title IX and the United States Constitution. An appeal of this decision was dismissed by the Third Circuit Court of Appeals on March 30, 2016.

The “Dear Colleague” letter is an unconstitutional intrusion by the federal government into an area that should be and is legally handled locally by school districts who best know their students and parents. At its core, the letter sacrifices the fundamental privacy rights associated with intimate bodily functions for millions of school students. Plainly, this directive will allow men to go into legally sex-separated bathrooms with young girls. The parents of these young girls are rightly concerned about President Obama’s policy and its implications for their daughters’ safety.

The fact that this directive mandates a change in already established law under Title IX with no regard for the legislative process is indefensible. It is the duty of Congress on a federal level and the Pennsylvania General Assembly on a state level to address any changes in statutory law. The letter’s threat to federal funding for public schools which do not comply with this unsupported directive is a deliberate attempt to circumvent the Constitutional legislative process and flies in the face of the very idea of a Constitutional Republic as envisioned by this country’s founders. Art. I, § 1 of the United States Constitution (“All legislative Powers...shall be vested in a Congress of the United States.”).

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We previously urged President Obama to rescind the “Dear Colleague” letter. We are now urging you to reject the President’s unauthorized policy and not to attempt to intervene in these important decisions being made by local school boards regarding bathroom use in public schools.

Sincerely,

Hon. Daryl Metcalfe

Hon. Will Tallman

Hon. Kathy Rapp

DDM:gkb

List of those who signed the letter to the Governor:

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Hon. Will Tallman  
Hon. Kathy Rapp  
Hon. Bryan Cutler  
Hon. Sandra Major  
Hon. Donna Oberlander  
Hon. Brian Ellis  
Hon. Kerry Benninghoff  
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