


Substantial Disruption



The Kids Are Alright With It

By Mike Tully

The Trump administration's decision to withdraw federal protections for transgender public school students constitutes poor governance, deficient humanity, and legal ignorance. A "[Dear Colleague Letter](#)" from the Departments of Justice and Education dated May 13, 2016 detailed those protections. The Obama administration recognized that transgender students were denied equal access to educational opportunities and did not enjoy civil rights protections available to other students. Discrimination on the basis of gender identity and gender expression violates Title IX of the Education Amendments of 1972 (Title IX). The new administration's decision to abandon the protections [endangers transgender students](#) and will do far more harm than good.

In the [2011 National School Climate Survey](#) by the Gay, Lesbian & Straight Education Network (GLSEN), eight out of ten transgender students said they felt unsafe at school. Nearly six out of ten experienced verbal harassment on account of their gender expression, more than twice the rate of their peers. A recent GLSEN [survey in Arizona](#) that included gay and lesbian students along with transgender students reached a similar conclusion. "Schools are still hostile environments for so many of these students," stated Ricardo Martinez, Chair of GLSEN Phoenix, "and now more than ever they need our support."

[Dr. Warren J. Blumenfeld](#), a lecturer with the University of Massachusetts, Amherst, College of Education and author of several books, including [Warren's Words: Smart Commentary on Social Justice](#), notes that LGBT youth live a very different life experience from their peers, and not just in the school setting. "For one thing, they live in families who very often do not share their sexual and/or gender identity," Dr. Blumenfeld wrote in an email message, adding, "I call these 'diasporic' identities - - we are dispersed within families who are different than us." "LGBTQ youth live in families with the added fear of 'coming out' to others," wrote Dr. Blumenfeld. "They also suffer significantly higher risks of being bullied and dropping out of school."

He blames adults more than kids for the harmful experience of transgender youth, stating, "(T)he reaction/backlash is not generally coming from other youth." "They have no problem with their transgender peers very often, especially at the younger grades," he said. "The problem is coming, instead, from adults: students' parents, community members, sometimes from administrators and teachers and clergy."

Janet Mock, a transgender woman, echoed Dr. Blumenfeld's words in a [compelling essay](#) in the New York Times. "When trans students are told that they cannot use public facilities, it doesn't only block them from the toilet — it also blocks them from public life," she wrote. "It tells them with every sneer, every blocked door, that we do not want to see them, that they should go hide and that ultimately they do not belong. When schools become hostile environments, students cannot turn to them. Instead they are pushed out." She concluded: "That is the situation the Trump administration is creating."

Secretary of Education Betsy DeVos defended the change in a [statement](#) that did not even include the word “transgender.” “This is an issue best solved at the state and local level,” she stated, a [position shared](#) by Attorney General Jefferson Sessions. Dr. Blumenfeld, in an [article published in the LGBTQ Nation website](#), disagrees, writing, “Contrary to Sessions and DeVos’ views, this is most emphatically a federal issue.” He refuted the “lack of prior claim” argument that suggests “if it was not there at the beginning of our organization, our culture, or our country, then it should not exist now.”

His position is endorsed in the Supreme Court case, [Oncale v. Sundowner Offshore Services, Inc.](#), which found that Title VII employment protections included same-sex harassment. “As some courts have observed, male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII,” wrote the Court. “But statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.” The author of that expansive, progressive language? The primary originalist himself, Justice Antonin Scalia.

When [Title IX](#) was adopted in 1972 it’s unlikely that anybody was thinking of gender expression or gender identity when declaring, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” But discrimination on that basis is a “reasonably comparable evil” to those considered at the time. Basing policy on that reality is humane, good governance, and legally sound.