



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 10, 2016

Jacinto A. Ramos, Jr.
Fort Worth Independent School District Board President
Fort Worth Independent School District
100 N. University Dr.
Fort Worth, TX 76107
jacinto.ramos@fwisd.org

Dear President Ramos:

As you are now well aware, your administrative staff recently adopted “Transgender Student Guidelines” that mandates that transgender students be allowed to use a restroom of their choosing. The policy provides that “school personnel may only share this information [regarding the student’s actual or perceived gender identity and expression] on a need-to-know basis or as the student directs. This includes sharing information with the student’s parent or guardian.” The sweeping policy was not adopted by the school board.

I have strong concern that this policy violates provisions in the Texas Education Code that give parents an unequivocal right to information regarding their children and is motivated by a misguided view of Title IX.

I. THE TEXAS EDUCATION CODE ALWAYS GIVES PARENTS THE RIGHT TO KNOW AND TO DIRECT THE EDUCATION OF THEIR CHILDREN.

The U.S. Supreme Court has long recognized that the fundamental rights of parents include the right to direct the education of their children.¹ The Texas Legislature has made clear in the Education Code that “[p]arents are partners with educators, administrators, and school district boards of trustees in their children’s education. Parents shall be encouraged to actively participate in creating and implementing educational programs for their children.”² And the Code makes clear that “a board of

¹ See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923) (recognizing the power of parents to control the education of their own”). See also *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Troxel v. Granville*, 406 U.S. 205 (1972); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

² TEX. EDUC. CODE § 26.001(a).

trustees, administrator, educator, or other person may not limit parental rights.”³ To ensure parents are informed of their child’s activities and behavior at school, the law provides that a “parent is entitled to access to all written records of a school district concerning the parent’s child”⁴ as well as “full information regarding the school activities of a parent’s child.”⁵ Finally, the Education Code allows a parent to “remove the parent’s child temporarily from a class or other school activity that conflicts with the parent’s religious or moral beliefs if the parent presents or delivers to the teacher of the parent’s child a written statement authorizing the removal of the child from the class or other school activity.”⁶ And these principles also have a corollary in federal law.⁷

Together, these laws leave no doubt parents are partners in education with the schools and have a right to access the school’s information regarding their children. The transgender policy your administrators have adopted turns this mandatory framework on its head and relegates parents to a meaningless status.

II. FEDERAL AGENCIES LACK AUTHORITY TO REWRITE TITLE IX TO REQUIRE THE TYPE OF POLICY YOUR ADMINISTRATORS IMPLEMENTED.

The transgender policy cites as the governing law Title IX of the Education Amendments of 1972. The policy indicates that the federal Office of Civil Rights has offered written guidance that “Title IX prohibits sex discrimination based not only on sex and sexual orientation but also on gender identity.” Such a view misconstrues the constitutionally confined role of the federal executive branch. At the federal level, Congress enacts laws that the executive branch enforces. And because the States are sovereigns, the U.S. Supreme Court has held that only Congress (and not agencies)

³ *Id.* § 26.001(c). Toward that end, the law requires school boards to cooperate in establishing at least one parent-teacher organization to promote the involvement of parents in school activities.

⁴ *Id.* § 26.004 (specifically listing such types of written records as “disciplinary records,” “counseling records,” “psychological records,” “teacher and school counselor evaluations,” and “reports of behavioral patterns”).

⁵ *Id.* § 26.008(a).

⁶ *Id.* § 26.010(a).

⁷ 20 U.S.C. § 1232g(a)(1)(A) (“No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children.”); *see also* 20 U.S.C. § 1232h (“All instructional materials, including teacher’s manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children.”).

may attach conditions to States' receiving federal funds, but "the conditions must be set out 'unambiguously.'"⁸ This constitutional requirement that Congress clearly notify the States of conditions on receiving federal funds is particularly important when control of schools is "one of the most traditional areas of state concern" and "most sensitive areas of human affairs."⁹ In short, only Congress—not an agency—has the constitutional authority to impose restrictions on States that receive federal funds.

Here, the transgender policy does not cite to Congress's enactment in Title IX for the proposition that federal law addresses gender identity. The term "gender identity" is nowhere in Title IX.¹⁰ And the policy admits that it is a federal agency that is attempting to read that phrase into the statute, which it lacks the constitutional authority to do.

We sincerely hope you will assess these deficiencies in the transgender policy and more as the board deliberates its next steps.¹¹

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.

KEN PAXTON

⁸ *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)).

⁹ *Davis, as Next Friend of Lashonda D. v. Monroe County Bd. of Ed.*, 526 U.S. 629, 658 (1999) (Kennedy, J., dissenting).

¹⁰ 20 U.S.C. § 1681(a).

¹¹ The above deficiencies are by no means an implication that these are the only legal issues with the policy.