

May 15, 2014

Assistant Secretary Catherine Lhamon
Office for Civil Rights
U.S. Department of Education
Lyndon Baines Johnson Department of Education Bldg.
400 Maryland Avenue, SW
Washington, DC 20202-1100

Dear Assistant Secretary Lhamon,

The undersigned organizations represent a diverse group of advocates in the education, civil rights, youth development and mental health communities, including educators and school-based professionals, parents, and consumers of educational and mental health services. We thank you for the Department of Education Office for Civil Rights' (OCR) continuing work to ensure that all students have equal access to education, regardless of background, circumstances, or identity. We write you today to express our gratitude for your recent clarification that Title IX protections against sex-based discrimination extend to discrimination based on gender identity and failure to conform to sex stereotypes. This clarification is an important step towards ensuring that transgender and gender non-conforming students have access to a safe and equal education. We urge you to take the next step and release guidance clearly outlining the appropriate treatment of transgender and gender non-conforming students under Title IX of the Education Amendments of 1972.

Transgender youth and young adults are increasingly visible in our schools, with an estimated 225,000 of our pre-K through postsecondary students identifying as transgender. As you are aware, the legal landscape reflecting the treatment of transgender and gender non-conforming people under federal non-discrimination law has changed significantly in recent years. Many courts, along with the EEOC, have recognized that discrimination on the basis of a person's gender identity, gender transition, or transgender status constitutes sex discrimination under statutes such as Title VII of the Civil Rights Act of 1964.ⁱ Courts and state and federal agencies, including the Department of Justice's Office on Violence against Women, are also consistently taking the view that gender identity nondiscrimination requires equal access to programs and facilities that are consistent with a person's gender identity.ⁱⁱ

Many states (such as Massachusetts, Colorado, Connecticut, Maine, and Washington), universities, colleges, and school districts (including Los Angeles Unified School District, one of the nation's largest school districts) have already adopted clear policies to protect transgender students. Unfortunately, many school districts continue to ignore this vulnerable student population due to uncertainty about whether Title IX extends to transgender students. Without explicit guidance on this issue, transgender students must attend school in an unwelcoming, or harmful, school environment while school administrators and parents attempt to negotiate a solution. Our collective constituents would all benefit from guidance in this area from OCR.

We ask you to clarify the scope of Title IX's prohibition on discrimination based on a student's gender identity, transgender status, or gender transition, specifically the extent to which the law:

- Requires schools to respect students' gender identity for all purposes;
- Protects the private nature of a student's transgender status;
- Requires existing dress code policies to be enforced based on a student's gender identity and gender expression;
- Ensures access to all school programs, activities, and facilities based on gender identity; and
- Obligates schools to offer participation on athletic teams based on gender identity.

The Department of Education has already been confronted with these issues. For example, this past July, the Office of Civil Rights announced an historic resolution agreement in *Student v. Arcadia Unified School District*, which has resulted in that district developing and implementing comprehensive board policies and administrative regulations that provide transgender students the opportunity to succeed in school. Providing guidance and clarification in this regard would be more efficient and cost-effective for all parties than continued costly litigation under Title IX. Beyond the practical and financial benefits of such guidance, clarification of these rights is critical to protect the health and wellbeing of transgender and gender non-conforming youth in schools, and is consistent with accepted medical and mental health standards. Discrimination against transgender and gender non-conforming students often leads to lower academic achievement, poor psychological outcomes, and school push out.

GLSEN's 2011 School Climate Survey found that while LGBT students often faced hostile school climates, transgender students face the most hostile climates. Among the more than 700 transgender students in grades 6 through 12 who responded to the survey, 80% reported feeling unsafe at school, 75.4% reported being verbally harassed, and 16.8% reported being physically assaulted. This and other surveys have found that this victimization contributes to a host of negative outcomes for transgender youth, including decreased educational aspirations, academic achievement, self-esteem, and sense of belonging in school, and increased absenteeism and depression.ⁱⁱⁱ Transgender youth experience serious negative mental health outcomes as the result of factors such as discrimination and victimization; nearly half of young transgender people have seriously thought about taking their lives and one quarter report having made a suicide attempt.^{iv}

Without proper guidance, school policies can often contribute to negative outcomes for transgender youth in schools. Dress codes, access to sex-segregated spaces, use of proper names and pronouns, and participation on athletics teams are all school policy issues that have the potential to either powerfully affirm or stigmatize a transgender student.

Based on case law development of Title VII and Title IX, it is clear that transgender and gender non-conforming youth are protected from discrimination and harassment, but many school districts do not have a clear understanding about how these legal protections should translate to non-discriminatory school policies. As a result, transgender and gender non-conforming youth are experiencing significant health and educational disparities. Schools, parents, professionals, and most importantly, students, would benefit significantly if schools nation-wide were informed and equipped to accommodate these students in a safe, appropriate, and non-discriminatory way.

All transgender and gender non-confirming students deserve an education free from discrimination and harassment. We strongly urge you to stand by this principle and issue guidance clarifying the application of Title IX to gender identity and expression.

Respectfully,

Advocates for Youth
African American Ministers In Action-Equal Justice Task Force
American Civil Liberties Union
American Foundation for Suicide Prevention/SPAN USA
American Group Psychotherapy Association
American Psychiatric Association
American School Counselor Association
Anti-Defamation League
CenterLink: The Community of LGBT Centers
Disability Rights Education & Defense Fund
Equality Federation
Families United Against Hate (FUAH)
Family Equality Council
Gay-Straight Alliance Network
GLMA: Health Professionals Advancing LGBT Equality
GLSEN (Gay, Lesbian and Straight Education Network)
Human Rights Campaign
Ithaca LGBT Task Force
Jewish Council for Public Affairs
Keshet
League of United Latin American Citizens
NAADAC, the Association for Addiction Professionals
National Association for Children's Behavioral Health
National Association for Multicultural Education
National Association for the Education of Homeless Children and Youth
National Association of County Behavioral Health and Developmental Disability
National Association of School Psychologists
National Association of Secondary School Principals
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Disability Rights Network
National Education Association
National Gay and Lesbian Task Force
National Queer Asian Pacific Islander Alliance
PFLAG National
Safe Schools Coalition (SSC)
School Social Work Association of America
Sexuality Information and Education Council of the U.S. (SIECUS)
Sikh American Legal Defense and Education Fund (SALDEF)

Southeast Asia Resource Action Center (SEARAC)
The International Foundation for Gender Education
The Trevor Project
TransActive Gender Center
Transgender Law Center
Youth Guardian Services

ⁱ See, e.g., Glenn v. Brumby, 663 F.3d 1312 (11th Cir. 2011); Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005); Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004); Rosa v. Park W. Bank & Trust Co., 214 F.3d 213 (1st Cir. 2000); Schwenk v. Hartford, 204 F.3d 1187 (9th Cir. 2000); Schroer v. Billington, 577 F. Supp. 2d 293 (D.D.C. 2008); Lopez v. River Oaks Imaging & Diag. Group, Inc., 542 F. Supp. 2d 653 (S.D. Tex. 2008); Mitchell v. Axcan Scandipharm, Inc., No. Civ. A. 05-243, 2006 WL 456173 (W.D. Pa. Feb. 17, 2006); Tronetti v. TLC HealthNet Lakeshore Hosp., No. 03-CV-0375E(SC), 2003 WL 22757935 (W.D.N.Y. Sept. 26, 2003); Doe v. United Consumer Fin. Servs., No. 1:01 CV 1112, 2001 WL 34350174 (N.D. Ohio Nov. 9, 2001); Rentos v. OCE-Office Systems, No. 95 Civ. 7908, 1996 WL 737215, *8 (S.D.N.Y. Dec. 24, 1996); Maffei v. Kolaeton Industry, Inc., 626 N.Y.S.2d 391 (N.Y. Sup. Ct. 1995); Macy v. Holder, E.E.O.C. Appeal No. 0120120821 (Apr. 23, 2012).

ⁱⁱ See, e.g., U.S. Dept. of Justice, Office on Violence Against Women, *Frequently Asked Questions: Nondiscrimination Grant Condition of the Violence Against Women Reauthorization Act of 2013* (Apr. 9, 2014), available at: <http://www.ovw.usdoj.gov/docs/faqs-ngc-vawa.pdf>; Doe v. Regional School Unit 26, 86 A.3d 600 (Me. 2014); Dept. of Fair Employment & Housing v. Amer. Pacific Corp., Case No. 34-2013-00151153-CU-CR-GDS (Cal. Sup. Ct. Mar. 13, 2014); Mathis v. Fountain-Fort Carson Sch. Dist. 8, Charge No. P20130034X (Col. Div. Civ. Rts. Jun. 17, 2013); Jones v. Johnson County Sheriff's Department, CP # 12-11-61830, Finding of Probable Cause (Iowa Ct. Rts. Comm'n Feb. 11, 2013).

ⁱⁱⁱ Greytak, E. A., Kosciw, J. G., and Diaz, E. M. (2009). *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools*. New York: GLSEN.

^{iv} Arnold H. Grossman & Anthony R. D'Augelli, *Transgender Youth and Life-Threatening Behaviors*, 37(5) SUICIDE LIFE THREAT BEHAV. 527 (2007).