

SENT VIA FACSIMILE AND U.S. MAIL

February 17, 2016

Rick Maxey, Ph. D., Superintendent  
Horry County School District  
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Conway, SC 29526  
Fax: 843-488-6717

Dr. Paul K. Browning, Principal  
Socastee High School  
4900 Socastee Boulevard  
Myrtle Beach, SC 29588  
Fax: 843-293-3393

Re: Title IX Violation and Discrimination Against Transgender Students

Drs. Maxey and Browning:

It has come to our attention that a transgender student was suspended from Socastee High School recently for using the bathroom in conformity with his gender identity. Although we are not currently representing the student or his family, we write to inform you that these allegations implicate violations of federal law and are contrary to an educator's obligation to provide a safe environment and to treat all students with dignity and respect. News reports indicate that this student has been forced to withdraw from school as a result of the decision to deny him reasonable access to a bathroom. It is astounding that you would allow a student to be denied an education based on that student's efforts to safely use the restroom between classes.

To the extent that you are unaware of your obligation to treat transgender and gender non-conforming students fairly and equally, or are uncomfortable with the reality of transgender people, it may be helpful to remember that everyone has a gender identity. Some people's gender identities correspond with the gender assigned to them at birth, while others' do not. People falling into the former category are referred to as cisgender, while those falling into the latter category are transgender.

For many transgender youth, part of expressing their gender identity includes a gender affirming process through which the young person begins living and self-identifying in a manner consistent with his or her gender identity. School officials who obstruct a student's efforts to do so not only risk violating that student's rights, but hindering the student's health. The ability for transgender people to live fully in conformity with their gender identity is consistent with medical guidelines that include supporting transgender people in their affirmed gender in all aspects of life.

It is important that school district personnel understand the extent of the harm caused by refusal to respect the gender identity of transgender students. Second to family, school is the most important influence on a young person's life. Refusing to affirm a person's gender identity can have damaging effects on the person's psychological and social functioning and development.

While the harm associated with failure to respect a child's gender identity should be incentive enough, numerous courts have clarified that discrimination against transgender people is sex discrimination that violates federal anti-discrimination laws. *See, e.g., Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008); *Macy v. Holder*, Appeal No. 0120120821, 2012 EEO PUB LEXIS 1181, at \*19 (E.E.O.C. April 20, 2012). Over the past five years, the U.S. Department of Education ("ED") has paid increasing attention to how schools treat transgender students, clarifying on multiple occasions that discrimination on the basis of sex under Title IX of the Education Amendments of 1972, 42 U.S.C. 1681 ("Title IX") and its implementing regulations, 34 C.F.R. § 106.31, *et seq.*, includes discrimination on the basis of gender identity.<sup>1</sup>

In the context of Title IX's applicability to gender identity discrimination with regards to the use of sex-segregated facilities such as restrooms, the ED Office of Civil Rights ("OCR") issued a letter on January 7, 2015 making clear that: "The Department's Title IX regulations permit schools to provide sex-segregated restrooms ... under certain circumstances. When a school elects to separate or treat students differently on the basis of sex in those situations, a school generally must treat transgender students consistent with their gender identity."<sup>2</sup> Like Title IX, Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c, *et seq.* ("Title IV") also prohibits sex-based discrimination by public schools against all students,<sup>3</sup> including those who are transgender.

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<sup>1</sup> *See* Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ., to Colleague (Oct. 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; cf Letter from Leon Rodriguez, Dir., Office for Civil Rights, U.S. Dep't of Health & Human Servs., to Maya Rupert, Esq., Fed. Policy Dir., Nat'l Ctr. for Lesbian Rights (July 12, 2012), available at <http://www.washingtonblade.com/content/files/2012/08/101981113-Response-on-LGBT-People-in-Sec-1557-in-the-Affordable-Care-Act-from-the-U-S-Dept-of-Health-and-Human-Services.pdf> (stating that the U.S. Department of Health and Human Services, Office of Civil Rights recognizes that Section 1557 of the Affordable Care Act, which prohibits discrimination on the grounds prohibited under Title IX of the Education Amendments of 1972, "extends to claims of discrimination based on gender identity"); CATHERINE E. LHAMON, U.S. DEP'T OF EDUC., QUESTIONS AND ANSWERS ON TITLE IX AND SINGLE-SEX ELEMENTARY AND SECONDARY CLASSES AND EXTRACURRICULAR ACTIVITIES 25 (2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf> ("Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.").

<sup>2</sup> Letter from James A. Ferg-Cadima, Acting Deputy Asst. Sec'y of Policy, Office of Civil Rights, U.S. Dep't of Educ. (Jan. 7, 2015) (attached as Exhibit B to Statement of Interest of the United States, *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-cv-0054 (E.D. Va. June 29, 2015), available at <http://www.justice.gov/sites/default/files/crt/legacy/2015/07/09/gloucestersoi.pdf>).

<sup>3</sup> *See, e.g., Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 150-51 (N.D.N.Y. 2011); *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008); *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1090 (D. Minn. 2000).

On multiple occasions, school districts, ED, and DOJ have entered into resolution agreements requiring the school districts to allow transgender students to use the restroom and other sex-segregated facilities that accord with their gender identity in order to resolve charges of discrimination on the basis of gender identity. For example, on July 24, 2013, DOJ entered a settlement agreement with a California school regarding the school's refusal to allow a transgender male student to use the boys' restrooms and locker rooms. The settlement required the school district to take a number of steps to ensure that the student will be treated like other male students while attending school, including full use of the boys' restrooms and locker rooms.<sup>4</sup> Similarly, on October 14, 2014, the U.S. Department of Education, Office for Civil Rights ("OCR") approved a resolution agreement with a transgender girl who had been subjected to discrimination and gender-based peer harassment in her school district.<sup>5</sup> The agreement memorialized the student's ability to use sex-designated facilities, such as restrooms, "for female students at school . . . consistent with her gender identity."

As recently as November 2, 2015, OCR found a public school district to be in violation of Title IX for denying a transgender girl access to her high school's female locker rooms.<sup>6</sup> In so doing, OCR noted that denying the transgender student access to the locker rooms that were in accordance with her gender identity amounted to discrimination on the basis of sex, in violation of Title IX—a finding that not only exposes the school district in question to legal liability, but also a loss of federal funds.

It is worth noting that school administrators cannot accept the private biases of others, or generalized and speculative privacy concerns to justify a discriminatory policy that would prevent a transgender girl from using the same restrooms and sex-segregated facilities as other girls. Indeed, within the context of access to restrooms that are in accordance with a transgender student's gender identity, DOJ has specifically stated that "generalized assertions of safety and privacy cannot override Title IX's guarantee of equal educational opportunity."<sup>7</sup> To that end, OCR has noted that, should a student find the presence of a transgender student in a restroom or other sex-segregated space disconcerting, it is the objecting student that should bear the burden of utilizing a different restroom, and not the transgender student.<sup>8</sup>

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<sup>4</sup> See Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, DOJ Case No. DJ 169-12C-70, OCR Case No. 09-12-1020 (July 24, 2013), available at [http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia\\_Resolution\\_agreement\\_07.24.2013.pdf](http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf)

<sup>5</sup> See Resolution Agreement, Downey Unified School District, OCR Case No. 09-12- 1095 (Oct. 8, 2014), available at <http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf>

<sup>6</sup> Letter from Adele Rapport, Regional Director, Office of Civil Rights, U.S. Dep't of Educ., OCR Case No. 05-14-1055 (Nov. 2, 2015), available at <https://assets.documentcloud.org/documents/2501220/letter-from-the-u-s-dept-of-education-to-daniel.pdf>.

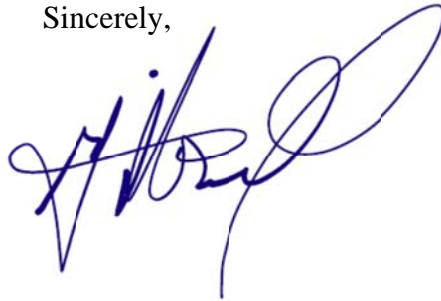
<sup>7</sup> Br. for the United States, *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056 (4th Cir. Oct. 28, 2015), available at <http://www.justice.gov/crt/file/788971/download>.

<sup>8</sup> See Letter from Adele Rapport, Regional Director, Office of Civil Rights, U.S. Dep't of Educ., OCR Case No. 05-14-1055 (Nov. 2, 2015), available at <https://assets.documentcloud.org/documents/2501220/letter-from-the-u-s-dept-of-education-to-daniel.pdf>, at 12. Cf. *Cruzan v. Special Sch. Dist. # 1*, 294 F.3d 981 (8th Cir. 2002) (affirming

The refusal to respect students' gender identities embarrasses and demeans those students. It prevents them from having equal opportunities to learn and participate at school. It causes anxiety and other psychological distress that may rise to the level of a disability under the IDEA and/or Section 504 of the Rehabilitation Act, both of which require the school to make accommodations and take appropriate action to ensure that all students can access a Free Appropriate Public Education required by law. Such appropriate action begins with ensuring that all students have equal and dignified access to bathrooms. Marginalizing transgender students by requiring them to use bathrooms that are not accessible to their classrooms or that unnecessarily single them out for unequal treatment and safety concerns is unacceptable. Finally, please be advised that school discipline for "insubordination" or "disruption" for exercising a legal right is equally unlawful: "School officials may not punish indirectly, through the guise of insubordination, what they may not punish directly."<sup>9</sup>

We urge you to meet with the student and his family to discuss rescinding the disciplinary action, to welcome the student back to school and to respect his gender identity, as federal laws require and in order to avoid liability.<sup>10</sup> In addition, the failure to follow the law and to respect transgender students' rights reflects that the school and the district should engage in training and updating its policies. We would be happy to assist in these efforts.

Sincerely,



Beth Littrell  
Senior Attorney

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dismissal of suit by non-transgender female teacher alleging discrimination and violation of her privacy based on school's policy allowing transgender female teacher to use the women's restroom and finding that objecting teacher could use other restrooms).

<sup>9</sup> *Holloman v. Harland*, 370 F.3d 1252, 1276 (11th Cir. 2004).

<sup>10</sup> This letter is not intended to set forth a complete statement of all of the legal rights or remedies of the student in question, nor all of the relevant facts, nor the legal or equitable bases on which the student's rights and remedies rest.