

December 14th, 2015

Secretary Arne Duncan
U.S. Department of Education
Lyndon Baines Johnson Department of Education Bldg
400 Maryland Avenue, SW
Washington, DC 20202-1100

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

Ms. Anurima Bhargava
Chief, Educational Opportunities Section
Civil Rights Division
United States Department of Justice
601 D Street, N.W., Ste. 4300
Washington, DC 20004

Re: Request for Guidance Reminding Schools of Obligations Under Title IX to Prevent Discrimination against Transgender Students

Dear Secretary Duncan, Assistant Secretary Lhamon, and Ms. Bhargava:

As an organization working on behalf of lesbian, gay, bisexual, transgender, and queer (LGBTQ) college students and those who serve as resources for those students, we are writing to request that the Office for Civil Rights (OCR) promptly issue guidance to universities and colleges clarifying their legal obligations under Title IX of the Education Amendments of 1972 with respect to gender identity and gender expression.

The primary aim of this letter is to advocate for increased safety, support, and inclusion for transgender students on campus. The transgender community includes a wide variety of identities; generally, we use the term transgender (or trans) to mean individuals whose gender identity or gender expression challenges traditional notions of female and male. Under this umbrella term are trans men (FTM), trans women (MTF), crossdressers, genderqueer

individuals, agender people, and people with other nonbinary gender identities. We believe that clarifying the role of Title IX with respect to gender identity will help transgender students as well as others on campus.

The Consortium of Higher Education LGBT Resource Professionals supports over 800 members on over 200 college campuses across the United States. Nearly every day, we hear from members who are struggling to ensure that transgender students are being treated equitably on their campuses. Our members tell us that they face institutional roadblocks, including: computer systems that disregard transgender students' names, unsafe restrooms, and few staff members who are competent in supporting transgender students. Together with our members, we work to create higher education environments where LGBTQ individuals have equity in every respect. Towards that end, we seek to remove barriers that prevent transgender students from full participation in the college environment.

Because of this goal, we appreciate the steps that OCR has taken thus far to ensure the equitable treatment of transgender students. These statements have been helpful to our members and their institutions in creating safer campus climates. In particular, we are grateful for three statements that the OCR has made recently.

First, in April 2014, the OCR issued a document titled "Questions and Answers on Title IX and Sexual Violence." The document states that "Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations." This statement means that transgender and other gender non-conforming students are protected by Title IX with respect to discrimination, sexual violence, and sexual harassment.

Likewise, in December 2014, your office issued a document titled "Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities." This document states that elementary and secondary schools "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." This document affirms Title IX's applicability to transgender students and the importance of respecting a student's gender identity.

Finally, we also appreciate the November 2015 letter to Township High School District 211 in Illinois supporting the right of a transgender high school student to use locker room and restroom facilities that correspond to her gender identity. We hope that colleges are inspired by this statement to examine their own facilities and policies to ensure that they are providing equal access for transgender students.

However, these documents fall short of discussing the full range of discrimination faced by college students on the basis of gender identity and gender expression. We request that OCR issue a statement that clarifies that the other aspects of Title IX are also relevant to transgender students. There are many other areas of campus life in which transgender students may experience sex-based discrimination, and educators would appreciate your guidance in preventing this.

Below are a few examples of places where colleges can prevent sex-based discrimination. A guiding statement from OCR can help colleges craft appropriate policies.

- In residential facilities, transgender students should be housed in accordance with their gender identities.
- In bathroom and locker room facilities, transgender students should be granted access in accordance with their gender identities. Schools should also create all-gender or “family” restrooms and locker rooms in order to provide additional options. Nevertheless, no student should be required to use separate facilities because they are transgender.
- In campus record-keeping systems, transgender students should be able to list a name, gender marker, and pronoun that reflect their identities.
- In sororities, fraternities, and other sex-segregated groups, transgender students should be granted access in accordance with their gender identities.
- In student health centers, transgender students should be cared for by professionals with experience and knowledge about the health needs of transgender individuals. Student health insurance policies should cover medically necessary care for transgender individuals, including hormones and surgery.

As colleges and universities admit increasing numbers of transgender students to their campuses, they will be looking to federal guidelines to be sure that they are in compliance. We request your help in providing that information to them.

Sincerely,

The Consortium of Higher Education LGBT Resource Professionals