

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

SELINA SOULE, *et al.*, )  
 )  
 *Plaintiffs,* )  
 )  
 v. )  
 )  
 CONNECTICUT ASSOCIATION OF )  
 SCHOOLS, INC. *et al.*, )  
 )  
 *Defendants,* )  
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No. 3:20-cv-00201-RNC

**REPLY**

September 25, 2020

**DEFENDANTS’ REPLY IN SUPPORT OF MOTION TO DISMISS**

Plaintiffs have brought this lawsuit based on the unprecedented theory that Title IX prohibits schools from allowing girls who are transgender—and who are recognized as girls in current school records and daily life activities in the school and community—from participating on the same sports teams as other girls. Plaintiffs’ claims are not supported by the facts, sound legal analysis, or legal precedent, and are otherwise barred as brought against school districts they never attended. Nothing in Plaintiffs’ Memorandum in Opposition (“Opp.”) rebuts these arguments. Therefore, the Motion to Dismiss should be granted in its entirety.

**I. Plaintiffs’ Claims for Prospective Relief Should Be Dismissed for Lack of Standing.**

**A. Plaintiffs’ Claims of Future Injury Are Too Speculative to Support Injunctive Relief Against CIAC’s Policy.**

On a motion to dismiss pursuant to Rule 12(b)(1), “plaintiffs bear the burden of alleging facts that affirmatively and plausibly suggest that they have standing to sue.” *Liberian Cmty. Ass’n of Conn. v. Lamont*, 970 F.3d 174, 184 (2d Cir. 2020) (cleaned up). When they filed this lawsuit in February 2020, Plaintiffs alleged they faced future injury as a consequence of having to compete against Individual Intervenors, Andraya and Terry, during the Spring 2020 track-and-field season.

Compl. ¶¶ 143-46. But after the Complaint was filed, the Spring 2020 season was canceled due to COVID-19, and Andraya, Terry, Soule, and Mitchell all graduated high school. In light of these events, Plaintiffs now concede that Soule and Mitchell do not have standing to seek prospective relief, *see opp.* 34, but Plaintiffs contend that Smith and Nicoletti still have standing to do so.

That argument is misguided. To establish standing for injunctive relief Plaintiffs must “plead a sufficient likelihood that” they “face[] a substantial risk of suffering a *future* injury.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 184 (1983). “Past exposure to [allegedly] illegal conduct does not in itself show a present case or controversy regarding injunctive relief.” *Id.* at 102. In their Second Amended Complaint, Smith and Nicoletti fail to plausibly allege any actual or imminent risk that they will compete against a girl who is transgender at any time in the future. Indeed, they do not even allege knowledge that any girl who is transgender is competing in track in their events this school year, or will be while they are in high school. Without any threat of imminent *future* injury, Smith and Nicoletti lack Article III standing to seek an injunction against CIAC’s policy. *See* Second Amended Complaint (“SAC”) ¶ 178(C) (requesting such an injunction).<sup>1</sup>

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<sup>1</sup> Plaintiffs liberally pick and choose language from *McCormick* to support their standing (and other) arguments. *See Opp.* 10, 15–17, 19–22, 33–35 (discussing standing) (citing *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275 (2d. Cir. 2004)). But *McCormick* is not helpful to Plaintiffs. There, the equal treatment issue was cut-and-dry: “scheduling . . . girls’ soccer”—but not boys’—“out of the championship game season.” 370 F.3d at 295. Importantly, the *McCormick* parties stipulated that the plaintiff girls would play soccer in the fall if they could. Thus, the “injury was not conjectural or hypothetical—[plaintiffs] wanted to play soccer in the fall and have a chance to compete in the championship games but the schools would not offer soccer in the fall.” *Id.* at 281. The defendants’ scheduling thus literally denied the plaintiffs the “chance to be champions” because they were competing at the wrong time. *Id.* at 291. These certainties are a far cry from the chain of speculation Plaintiffs attempt to construct here to establish standing.

In an attempt to save their claims, Plaintiffs assert that Smith and Nicoletti’s claims should be analyzed under the rubric of mootness. *See* Opp. 37. But this too fails.<sup>2</sup> To avoid dismissal for mootness, “there must be a reasonable expectation that the *same* complaining party would encounter the challenged action in the future,” and “mere speculation that the parties will be involved in a dispute over the same issue does not rise to the level of a reasonable expectation.” *Van Wie v. Pataki*, 267 F.3d 109, 114 (2d Cir. 2001) (emphasis in original). Plaintiffs have identified only two high school female athletes who are transgender—Andraya and Terry—who have *ever* competed in their track and field events in Connecticut. They do not identify any other girls who are transgender who may race against them in the future. Rather, Plaintiffs rely on pure speculation that a different, hypothetical, girl who is transgender *may* compete in in track and field at an *unknown time in the future, and* compete in the same events as Smith and Nicoletti, *and* place higher than Smith and Nicoletti in those events. The Second Amended Complaint fails to allege any facts that would plausibly permit the Court to infer that this extraordinary set of coincidences is likely to coming to pass. Accordingly, none of the four Plaintiffs has standing to seek prospective relief.

**B. Plaintiffs Have Failed to Plausibly Allege That Altering the Official Records of Past Races Is Likely to Redress Plaintiffs’ Injuries.**

Plaintiffs also seek an injunction requiring Defendants to alter the official records of past races to expunge the times of girls who are transgender and retroactively declare Plaintiffs the winners, regardless of the fact that they did not actually win. *See* SAC ¶¶ 178(D), (E). To establish standing for such a request, Plaintiffs must plausibly allege that it is “‘likely,’ as opposed to merely

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<sup>2</sup> Plaintiffs assert that Defendants bear a “heavy burden” to establish mootness, Opp. 37, but that more stringent standard applies only to the “voluntary cessation” exception to mootness, which is not at issue here. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 189 (2000) (articulating standard for voluntary cessation); *United States v. Concentrated Phosphate Exp. Ass’n*, 393 U.S. 199, 203 (1968) (same); Wright & Miller, 33 Fed. Prac. & Proc. Judicial Review § 8347 (2d ed.) (“[T]he Supreme Court applies an extremely strict standard for determining whether a defendant’s voluntary cessation of conduct moots a case.”).

‘speculative,’” that the alterations would redress their alleged injuries. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Plaintiffs’ belief that such an injunction “will make [them] happier” or provide “psychic satisfaction” is not enough. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 107 (1998). Rather, Plaintiffs must show they “personally would benefit in a tangible way from the court’s intervention.” *Warth v. Seldin*, 422 U.S. 490, 508 (1975).

Plaintiffs cannot make that showing. First, deleting Andraya and Terry’s racing times would not affect Plaintiffs’ times. Their times remain the same. And Plaintiffs’ conclusory assertions do not allow the Court to draw a plausible inference that it is likely that changing past athletic records by deleting the times of girls who are transgender will benefit Plaintiffs “in a tangible way.” Plaintiffs assert that altering records “will plausibly be relevant to the college recruitment opportunities,” even though their times would remain the same, *see* Opp. 35, but Soule and Mitchell have already graduated and matriculated at colleges. Thus, altering high school athletic records as sought by Plaintiffs cannot have any impact on Soule and Mitchell’s college recruitment opportunities.

Second, as for Nicoletti and Smith, the only “official records” at issue are from races that took place during their freshman year, in the Spring 2019 track-and-field season. Nicoletti and Smith each identifies only a single instance in which she allegedly would have placed higher in the standings but for the participation of Andraya or Terry. *See* Motion to Dismiss (“Mem.”) 9-10. Again, they assume that college recruiters look to placement rather than times. Regardless, the Second Amended Complaint does not allege any facts to support the assertion that deletion of the times run by Andraya and Terry during Nicoletti and Smith’s freshman season would plausibly have any effect on Nicoletti and Smith’s college recruitment opportunities years later.

Finally, Plaintiffs also assert—in an even more conclusory fashion—that altering records could somehow be relevant to future employment opportunities. *See* Opp. 35. But the Second Amended Complaint does not include a single allegation related to employment opportunities, and

the only cases Plaintiffs cite are those related to expungement of derogatory information from school records related to unconstitutional disciplinary sanctions, which is not at issue here. *Flint v. Dennison*, 488 F.3d 816, 824 (9th Cir. 2007); *Hatter v. L.A. City High Sch. Dist.*, 452 F.2d 673, 674 (9th Cir. 1971). The Opposition fails to demonstrate standing for such injunctive relief, and, therefore, the Motion to Dismiss should be granted.<sup>3</sup>

**C. Plaintiffs Lack Standing to Obtain Injunctive Relief for Athletic Events in Which Plaintiffs Have Not Competed, or Will Not Compete.**

At a minimum, Plaintiffs' requests for injunctive relief must be dismissed to the extent they seek to alter records of races in which Plaintiffs did not participate, delete times of girls who are transgender generally, or seek to bar transgender students from participating in future races that do not involve Plaintiffs. Despite Plaintiffs' assertions to the contrary, Plaintiffs' standing to seek such relief is a question of Article III jurisdiction, which cannot be "left for a later day." Opp. 39.

"[S]tanding is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). "At least one plaintiff must have standing to seek each form of relief requested in the complaint." *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017); *see also Laidlaw*, 528 U.S. at 185 (holding that "a plaintiff must demonstrate standing separately for each form of relief sought"). "[T]he actual-injury requirement would hardly serve the purpose of preventing courts from undertaking tasks assigned to the political branches, if once a plaintiff demonstrated harm from one particular inadequacy in government administration, the court were authorized to remedy all inadequacies in that administration." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)

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<sup>3</sup> Plaintiffs have twice amended the complaint, giving them ample opportunity to add factual allegations related to allegedly lost employment opportunities. By not doing so, Plaintiffs demonstrate that this claim is baseless. Indeed, despite the complaint, Plaintiffs have conceded in discovery responses that the only compensatory damages they seek are emotional damages. *See* Defendants' damages analysis, attached as Ex. 1.

(internal citation omitted). Rather, “[t]he remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established.” *Id.* (internal quotation omitted).

This is not a question of the specific relief requested, *contra* Opp. 39–40, but of whether Plaintiffs have standing to request relief in the first place. They do not. No plaintiff has standing to seek relief related to races in which she did not or will not compete. Plaintiffs do not have Article III standing to redress perceived injuries to others.

## **II. Plaintiffs Have Failed to Allege a Cognizable Claim Under Title IX.**

While the Motion to Dismiss demonstrates that excluding girls who are transgender from competing on athletic teams consistent with their gender identity would violate Title IX and the Equal Protection Clause, *see* Mem. 18–27, the question here is even simpler. The question in this case is not whether Title IX *requires* schools to allow girls who are transgender to participate on girls’ athletic teams, but whether Title IX *prohibits* schools from doing so. As a matter of law, whatever complaints Plaintiffs may have about competing with girls who are transgender, those grievances do not give rise to a Title IX claim.

### **A. Title IX and Its Implementing Regulations Do Not Bar Girls Who Are Transgender from Participating with Other Girls.**

1. *Plaintiffs have failed to cite any court cases supporting their interpretation.*

Plaintiffs’ claims are premised upon the faulty assumption that Title IX and its regulations establish a definition of “sex” that precludes girls who are transgender—and who are recognized as girls “in current school records and daily life activities in the school and community,” *see* CIAC By-laws Article IX, Section B—from being recognized as girls for purposes of sex-separated athletic activities. As explained in the Motion to Dismiss, Plaintiffs fail to identify any text from Title IX, the implementing regulations, the 1979 Policy Statement, or any other OCR Policy Statements pre-2020

that purports to restrict schools from allowing girls who are transgender to play on the same teams as other girls. Mem. 28–29.

Plaintiffs also fail to identify any judicial precedent interpreting Title IX in such a manner. To the contrary, every court of appeals to consider the question in the context of sex-separated restrooms, *see* 34 C.F.R. § 106.33, has rejected Plaintiffs’ argument, concluding instead that the regulation “does not dictate how schools should approach transgender students’ restroom use or define a transgender student’s ‘sex.’” *Adams v. Sch. Bd. of St. Johns Cty.*, 968 F.3d 1286, 1309 (11th Cir. 2020); *accord Grimm v. Gloucester Cty. Sch. Bd.*, No. 19-1952, 2020 WL 5034430, at \*23 (4th Cir. Aug. 26, 2020), *as amended* (Aug. 28, 2020); *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020); *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018); *Dodds v. U.S. Dep’t of Educ.*, 845 F.3d 217, 221 (6th Cir. 2016) (denying stay pending appeal). In the context of athletics, the only district court to consider the question has similarly rejected the argument that separating teams based on sex requires the exclusion of girls who are transgender from participating in women’s competition. *See Hecox v. Little*, No. 1:20-CV-00184-DCN, 2020 WL 4760138, at \*30 (D. Idaho Aug. 17, 2020). The Opposition fails to identify any cases to the contrary.

2. *OCR’s August 31, 2020 notice is not entitled to any deference by this Court.*

Absent any judicial support for their position, Plaintiffs rely exclusively on the Office of Civil Rights (“OCR”) notice of impending enforcement action *in this very case*. *See* Opp. 5–8, 14–15 (citing revised notice of pending enforcement issued on August 31, 2020 (“the August Letter”)).<sup>4</sup> Plaintiffs assert that the August Letter is entitled to deference under *Auer v. Robbins*, 519 U.S. 452,

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<sup>4</sup> That Plaintiffs rely so heavily on the August Letter highlights the importance of the Department of Education being joined in this action.

457 (1997),<sup>5</sup> because it constitutes an agency’s interpretation of its own regulations. Opp. 14. But Plaintiffs’ argument is misplaced.

As an initial matter, Plaintiffs ignore the Supreme Court’s recent decision in *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), which scaled back lower courts’ interpretation of *Auer* and underscored the doctrine’s limited scope. In particular, *Kisor* emphasized that “a court may not defer to a new interpretation, whether or not introduced in litigation, that creates ‘unfair surprise’ to regulated parties.” *Id.* at 2418–19 (internal quotation omitted). “That disruption of expectations may occur when an agency substitutes one view of a rule for another” or provides a “construction conflicting with a prior one.” *Id.* (internal quotation omitted). Thus, *Kisor* controls, not *Auer*.

Second, Defendants are not aware of and could not locate *any* other OCR notice of impending enforcement action stating, as the August Letter does, that it constitutes “a formal statement of OCR’s interpretation of Title IX and its implementing regulations and should be relied upon, cited, and construed as such.” Instead, such notices—including OCR’s initial notice of enforcement in this case on May 15, 2020 (the “May Letter”)—have always said the opposite: that the notice “is *not* a formal statement of OCR policy and should *not* be relied upon, cited, or construed as such.” (emphases added). Compare August Letter (Ex. B to Opp.) with May Letter (Ex. A to Opp.). *Kisor* speaks precisely to this type of “unfair surprise” and prohibits this Court from giving any deference to OCR’s position.

Third, the August Letter’s conclusory assertion that Title IX’s regulations require transgender students to be separated by so-called “biological sex” fails to acknowledge that five courts of

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<sup>5</sup> Plaintiffs also cite to *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837 (1984). *Chevron* requires deference to an agency when the agency interprets an ambiguous *statute* that falls within its purview. *Auer*, in contrast, requires deference when interpreting a *regulation* previously promulgated by that agency. *Chevron* deference is irrelevant here because it is a regulation, not a statute, that results in the current dispute.

appeals, as discussed above, have rejected that very position. *See* August Letter 35. The August Letter’s failure to address, much less distinguish, precedent-setting opinions is precisely what *Kisor* seeks to avoid.

That *Kisor* governs is further demonstrated by OCR’s conflicting Title IX guidance in 2016 and 2017. As already briefed in Defendants’ Motion for Joinder, *see* ECF No. 90-1, in 2016, the Department of Education (“ED”) instructed that “[w]hen a school provides sex-segregated activities”—including athletics—“transgender students must be allowed to participate in such activities . . . consistent with their gender identity.”<sup>6</sup> Shortly after Donald Trump’s inauguration and Education Secretary DeVos’ confirmation in 2017, ED and DOJ withdrew the 2016 guidance, purportedly because it: (a) did not “contain extensive legal analysis or explain how the position is consistent with the express language of Title IX;” (b) did not “undergo any formal public process,” such as notice and comment; (c) conflicted with a recent decision from a district court in Texas; and (d) did not give “due regard for the primary role of the States and local school districts in establishing educational policy.”<sup>7</sup>

Now, in a complete reversal, the 2020 letters assert that the same athletic policies that OCR encouraged schools to adopt in 2016 to *comply* with Title IX actually *violate* the statute. Ironically, the August Letter also contradicts all statements made in 2017 about the proper procedure for enacting such policies. The August Letter was issued without extensive legal analysis, without the

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<sup>6</sup> Letter from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., and Vanita Gupta, Principal Deputy Assistant Att’y for Civil Rights, U.S. Dep’t of Just. (May 13, 2016), attached as Ex. 2. In an accompanying document with model policies, the Department of Education approvingly cited a Rhode Island policy mandating athletic participation in accordance with gender identity. *See* Office of Elementary and Secondary Education, Examples of Policies and Emerging Practices for Supporting Transgender Students (May 2016), attached as Ex. 3.

<sup>7</sup> Letter from Sandra Battle, Acting Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., and T.E. Wheeler, II, Acting Assistant Att’y General for Civil Rights, U.S. Dep’t of Just. (Feb. 22, 2017), attached as Ex. 4.

benefit of a formal public process such as notice and comment rulemaking, and in spite of contrary court precedent, while making a mockery of the Departments' statements in 2017 that due regard should be given to the primary role of the states and local schools in establishing educational policy in this area. The August Letter does this without acknowledging the extensive reliance interests that have been upended by this surprise change in policy. This unusual and unreasoned enforcement letter is not entitled to deference by this, or any other, Court.<sup>8</sup> And nothing in the plain text of Title IX or the athletic regulation prohibits schools from allowing girls who are transgender to compete on the same teams as other girls.

**B. Plaintiffs Have Not Plausibly Alleged the Elements of an “Equal Treatment” or “Effective Accommodation” Claim Under Title IX.**

Plaintiffs attempt to raise both “equal treatment” and “effective accommodation” claims under Title IX. But even if Title IX or its regulations required schools to define girls who are transgender as “males” (or define boys who are transgender as “females”) for purposes of participation on sex-separated teams, Plaintiffs claims would still fail. The Court should grant Defendants' Motion to Dismiss.

1. *Plaintiffs' equal treatment claim fails as a matter of law.*

Plaintiffs complain that they are denied equal athletic opportunity as a result of competing against girls who are transgender. Conflating and distorting “effective accommodation” and “equal treatment” claims, Plaintiffs assert that Title IX requires not merely an equal opportunity for girls and boys to compete, but also requires that an equal number of trophies be awarded to (in Plaintiffs' words) people with “male bodies” and people with “female bodies.” Plaintiffs cannot identify any

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<sup>8</sup> Defendants have moved to join ED and DOJ in this lawsuit, which DOJ has resisted. Now that ED has issued notices of impending action and referred the case to DOJ for enforcement, DOJ has no valid basis to avoid joinder in this matter. In fact, the August Letter compels ED and DOJ to be joined, and compels the Court to review the highly unusual and inappropriate manner in which the August Letter was issued.

court, or any prior enforcement action by OCR, that has interpreted Title IX in such a manner. And with good reason! Title IX claims for “equal treatment” all relate to equal treatment of boys’ and girls’ *teams* with respect to “schedules, equipment, coaching, and other factors affecting participants in athletics.” *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 92 (2d Cir. 2012). Plaintiffs do not allege that Defendants treat boys’ teams differently from girls’ teams in any way.

2. *Plaintiffs’ effective accommodation claim fails as a matter of law.*

By contrast, claims related to the creation or composition of particular sex-separated teams are analyzed exclusively under the rubric of “effective accommodation.” To prevail on a claim that cisgender girls have been denied effective accommodation as a result of competing with girls who are transgender, Plaintiffs would have to show that cisgender girls “do not possess sufficient skill . . . to compete actively” on a team with girls who are transgender. 1979 Policy Interpretation § VII.C.4.(b)(3) (emphasis added). Plaintiffs do not even attempt to make this showing. Nor could they. Two of the plaintiffs have outperformed both Andraya and Terry in championship races. And all are accomplished athletes who have won awards in multiple track-and-field events. As discussed in Defendants’ Motion to Dismiss—even assuming that Title IX somehow dictated the interpretation of “sex” that Plaintiffs advocate—Title IX allows schools to provide equal athletic opportunities to girls and boys on mixed teams without mandating that an equal number of males and females win every competition. Mem. 31–32.<sup>9</sup>

3. *Hypothetical situations fail to state a Title IX claim in this case.*

Instead of engaging with these undisputed facts, Plaintiffs focus on a hypothetical situation in which “the great bulk of the females would quickly be eliminated from participation and denied any

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<sup>9</sup> Taking words out of context, Plaintiffs argue that Title IX requires that athletic opportunities not be “illusory.” But the “illusory opportunities” in *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168, 175 (3d Cir. 1993) referred to girls trying out for boys’ teams without actually being able to play. The “illusory opportunities” in *Biediger*, 691 F.3d at 101, referred to Quinnipiac’s attempt “to pump up

meaningful opportunity for athletic involvement.” Opp. 2 n.1. But Plaintiffs’ factual allegations—as opposed to rhetoric—show nothing of the kind. The allegations show that for the past seven years, only two girls who are transgender, Andaya and Terry, have competed competitively in girls’ track-and-field, each in only three events out of dozens per meet. Opp. 23 n.7. Irrespective of Andraya and Terry’s talents, their participation in three events per meet has not resulted in cisgender girls being “categorically squeezed off of girls’ varsity teams, out of playing and competitive opportunities, and out of all victories and championships.” Opp. 18. *See also Hecox*, 2020 WL 4760138, at \*29 (“It is inapposite to compare the potential displacement allowing approximately half of the population (cisgender men) to compete with cisgender women, with any potential displacement one half of one percent of the population (transgender women) could cause cisgender women.”).

**C. Plaintiffs’ Claims for Retrospective Relief are Barred by *Pennhurst*.**

Despite Plaintiffs’ assertions to the contrary, *Pennhurst State Sch. & Hosp. v. Halderman* is routinely relied on to limit the scope of available relief. In arguing that *Pennhurst* “addresses the question of *whether* a private right of action will be implied from a federal mandate that is based on the spending power,” Opp. 75, Plaintiffs have confused *Pennhurst* with *Alexander v. Sandoval*, 532 U.S. 275 (2001). Indeed, the *primary* function of *Pennhurst* is to restrict the scope of available remedies when a private cause of action has already been created, whether explicitly or implicitly. *See Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (invoking *Pennhurst* to conclude that expert witness fees cannot be recovered as “costs” under the IDEA);

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its women’s track team rosters by requiring every injured field hockey, soccer, and volleyball player to join these teams even though they would never actually compete in the indoor and outdoor track seasons and, for that matter, would never want to enter a race.” Neither of these cases—nor any other case—stands for the proposition that an athletic opportunity is “illusory” unless a student is guaranteed to win every competition, as Plaintiffs maintain.

*Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998) (“Title IX’s contractual nature has implications for our construction of the scope of available remedies.”).

Nor is *Pennhurst*’s requirement for a clear statement to impose liability for money damages limited to cases in which the funding recipient has sovereign immunity. Opp. 46. It applies to *all* monetary conditions imposed through Spending Clause legislation. The Supreme Court thus routinely invokes *Pennhurst*’s clear-statement rule to protect school districts like Defendants here. *See Murphy*, 548 U.S. at 296; *Gebser*, 524 U.S. at 287); *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 74 (1992).

*Pennhurst* is also fatal to Plaintiffs’ requests for retrospective declaratory relief because a declaratory judgment may be considered “retrospective” relief only “to the extent that it is intertwined with a claim for monetary damages.” *Lippoldt v. Cole*, 468 F.3d 1204, 1217 (10th Cir. 2006).

**III. Plaintiffs Fail to Allege that Title IX Provides a Cause of Action Against the School District Defendants.**

Plaintiffs attend or attended four separate high schools, three of which are named as defendants.<sup>10</sup> But the Second Amended Complaint fails to set forth any facts that show that those schools violated Plaintiffs’ rights. Plaintiffs also assert claims against the two schools previously attended by Terry and Andraya. Yet Plaintiffs fail to demonstrate any basis on which they can seek

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<sup>10</sup> Presumably, the fourth, Immaculate High School, is not named because it is a private parochial school that does not receive federal funding and, therefore, is not bound by Title IX.

relief against schools that they do not attend. For the reasons set forth in the Motion to Dismiss and below, therefore, those schools should all be dismissed from this lawsuit.

**A. Plaintiffs' Claims Fail Against their Home Schools.**

In regard to the Plaintiffs' home schools, Plaintiffs argue that "Glastonbury, Canton, and Danbury have a duty to ensure that the athletic opportunities they provide to their students both effectively accommodate and ensure equal athletic opportunities for their female athletes." Opp. 27. Plaintiffs cite to Paragraphs 87–102 and 175–77 of the SAC as alleging facts that support the claim that the home schools did not meet those obligations. These paragraphs demonstrate the exact opposite, however: They show that the home schools provided teams for Plaintiffs; they allowed Plaintiffs to participate on those teams; and Plaintiffs participated with great success. Title IX simply does not provide a right for any student to finish first in an event, or finish in any particular position. Moreover, Plaintiffs cannot identify any allegations in the Complaint that demonstrate how the home schools would have any way of knowing whether runners on other schools' teams are transgender. Plaintiffs are attempting to impose obligations on their home schools that do not exist under Title IX. Therefore, the home schools must be dismissed.

**B. Plaintiffs' claims fail against Cromwell and Bloomfield.**

In the Motion to Dismiss, Bloomfield and Cromwell argued that courts have "dismissed Title IX claims brought by non-students, holding they lacked standing because the plaintiff in a Title IX suit must be a student of the educational institution being sued in order for his or her claims to proceed." Mem. 51. In other words, a student attending school in Danbury, Glastonbury, Canton and at Immaculate High School is not the "intended beneficiary" of federal funds received by Bloomfield or Cromwell. Rather, the "intended beneficiaries" of those funds are students attending those schools.

Bloomfield and Cromwell, unlike Plaintiffs, cite several cases, including *Doe v. Brown Univ.*, 896 F.3d 127, 133 (1st Cir. 2018), supporting that position.

First, that Bloomfield and Cromwell coordinate with other schools through the CIAC to establish competition schedules, even if true, does not make Plaintiffs the intended beneficiaries of federal funds received by Bloomfield or Cromwell. Although the cases on which Bloomfield and Cromwell rely are sexual assault cases, they address directly the situation presented here—a plaintiff who does not attend the school against which they filed a lawsuit—and are indistinguishable.

Second, Plaintiffs’ reliance on *Doe* to support their own argument is curious at best. Plaintiffs have cherry-picked a single, non-binding statement in footnote 6 that is nothing more than *dictum*. A footnote can never “clearly h[o]ld” anything, as wrongly asserted by Plaintiffs. *See* Opp. 29.<sup>11</sup> Moreover, *Fox v. Pittsburg State Univ.*, 257 F. Supp. 3d 1112 (D. Kan. 2017) is inapposite since it involves an employee, not a student, of the institution against which the employee brought suit. *Fox* says nothing about a student (or employee) having standing to bring a claim against a public school with which he or she has no affiliation.

Therefore, Plaintiffs’ claims as brought against Cromwell and Bloomfield fail as a matter of law and must be dismissed.

## CONCLUSION

For the foregoing reasons, the Second Amended Complaint should be dismissed.

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<sup>11</sup> Even as *dictum*, the cited footnote does not advance Plaintiffs’ argument. It suggests that members of the public engaging in educational programs or activities offered (1) by covered institutions (2) to the public may have a Title IX right of action should they encounter sex discrimination. 896 F.3d at 127 n.6. But Bloomfield and Cromwell’s track teams are unlike the cited examples of a campus tour or public lecture. *See id.* To the contrary—as with a biology laboratory or student support group—a person must be enrolled at the institution for access. Plaintiffs here are no more fit to bring a Title IX claim against Bloomfield or Cromwell for the composition of their track rosters than any adult on the street, because those schools do not open track participation to the public.

Respectfully submitted,

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Boards of Education*

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

SELINA SOULE, a minor, by Bianca  
Stanescu, her mother, et al.,

*Plaintiffs,*

v.

CONNECTICUT ASSOCIATION OF  
SCHOOLS d/b/a CONNECTICUT  
INTERSCHOLASTIC ATHLETIC  
CONFERENCE, et al.,

*Defendants.*

Case No.: 3:20-cv-00201-RNC

**PLAINTIFFS' DAMAGES ANALYSIS**

May 29, 2020

Pursuant to the Court's Scheduling Order Regarding Case Management Plan (Apr. 8, 2020, ECF No. 83), Plaintiffs Selina Soule, Chelsea Mitchell, Alanna Smith, and Ashley Nicoletti, by and through counsel, submit the following:

1. Plaintiffs state that the only financial damages they seek consist of nominal damages and compensatory damages for emotional distress. *See* Amended Complaint Prayer for Relief (F).
2. Emotional distress damages are intrinsically difficult to quantify and are not amenable to mathematical calculation. The quantum of compensatory damages for emotional distress will therefore be a question of fact to be decided by the jury. *See, e.g., Williams v. Trader Publ'g Co.*, 218 F.3d 481, 486 n.3 (5th Cir. 2000).

Dated this 29th day of May, 2020.

By: s/ Roger G. Brooks

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2020, a copy of the foregoing Plaintiffs' Damages Analysis was served on counsel of record for all parties via electronic mail.

*s/Roger G. Brooks*  
Attorney for Plaintiffs

# **EXHIBIT 2**

**RESCINDED**

**U.S. Department of Justice**  
Civil Rights Division



**U.S. Department of Education**  
Office for Civil Rights

**Dear Colleague Letter on Transgender Students**  
**Notice of Language Assistance**

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Aviso a personas con dominio limitado del idioma inglés:** Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**給英語能力有限人士的通知:** 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov)。

**Thông báo dành cho những người có khả năng Anh ngữ hạn chế:** Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**영어 미숙자를 위한 공고:** 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov) 으로 연락하시기 바랍니다.

**Paunawa sa mga Taong Limitado ang Kaalaman sa English:** Kung nahhirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na inpormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Уведомление для лиц с ограниченным знанием английского языка:** Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

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**U.S. Department of Justice**  
Civil Rights Division



**U.S. Department of Education**  
Office for Civil Rights

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.<sup>1</sup> This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is *significant guidance*.<sup>2</sup> This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at [ocr@ed.gov](mailto:ocr@ed.gov) or 800-421-3481 (TDD 800-877-8339); or DOJ at [education@usdoj.gov](mailto:education@usdoj.gov) or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.<sup>3</sup>

### Terminology

- Gender identity* refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.
- Sex assigned at birth* refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.

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- *Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

### **Compliance with Title IX**

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.<sup>4</sup> The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.<sup>5</sup>

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.<sup>6</sup> Because transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to restrictions imposed by state or local law in their place of birth or residence),<sup>7</sup> requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.<sup>8</sup>

#### **1. Safe and Nondiscriminatory Environment**

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.<sup>9</sup> If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX

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requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.<sup>10</sup>

## **2. Identification Documents, Names, and Pronouns**

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.<sup>11</sup>

## **3. Sex-Segregated Activities and Facilities**

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances.<sup>12</sup> When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.<sup>13</sup>

- Restrooms and Locker Rooms.** A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.<sup>14</sup> A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.<sup>15</sup>
- Athletics.** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.<sup>16</sup> A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.<sup>17</sup> Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.<sup>18</sup>
- Single-Sex Classes.** Although separating students by sex in classes and activities is generally prohibited, nonvocational elementary and secondary schools may offer nonvocational single-sex classes and extracurricular activities under certain circumstances.<sup>19</sup> When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.
- Single-Sex Schools.** Title IX does not apply to the admissions policies of certain educational institutions, including nonvocational elementary and secondary schools, and private undergraduate colleges.<sup>20</sup> Those schools are therefore permitted under Title IX to set their own

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sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.

- **Social Fraternities and Sororities.** Title IX does not apply to the membership practices of social fraternities and sororities.<sup>21</sup> Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.
- **Housing and Overnight Accommodations.** Title IX allows a school to provide separate housing on the basis of sex.<sup>22</sup> But a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.<sup>23</sup>
- **Other Sex-Specific Activities and Rules.** Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (*e.g.*, in yearbook photographs, at school dances, or at graduation ceremonies).<sup>24</sup>

#### **4. Privacy and Education Records**

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.<sup>25</sup> Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).<sup>26</sup> A school may maintain records with this information, but such records should be kept confidential.

- **Disclosure of Personally Identifiable Information from Education Records.** FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.<sup>27</sup> Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may

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violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.

- **Disclosure of Directory Information.** Under FERPA's implementing regulations, a school may disclose appropriately designated directory information from a student's education record if disclosure would not generally be considered harmful or an invasion of privacy.<sup>28</sup> Directory information may include a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.<sup>29</sup> School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.<sup>30</sup> A school also must allow eligible students (*i.e.*, students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student's directory information.<sup>31</sup>
- **Amendment or Correction of Education Records.** A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.
  - Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights.<sup>32</sup> If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.<sup>33</sup>
  - Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records.<sup>34</sup> If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.<sup>35</sup>

\* \* \*

We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/

Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Department of Education

/s/

Vanita Gupta  
Principal Deputy Assistant Attorney General for Civil Rights  
U.S. Department of Justice

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<sup>1</sup> 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term *schools* refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a).

<sup>2</sup> Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), [www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf).

<sup>3</sup> ED, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 13, 2016), [www.ed.gov/oese/osh/emeringspractices.pdf](http://www.ed.gov/oese/osh/emeringspractices.pdf). OCR also posts many of its resolution agreements in cases involving transgender students online at [www.ed.gov/ocr/lgbt.html](http://www.ed.gov/ocr/lgbt.html). While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

<sup>4</sup> 34 C.F.R. §§ 106.4, 106.31(a). For simplicity, this letter cites only to ED’s Title IX regulations. DOJ has also promulgated Title IX regulations. See 28 C.F.R. Pt. 54. For purposes of how the Title IX regulations at issue in this guidance apply to transgender individuals, DOJ interprets its regulations similarly to ED. State and local rules cannot limit or override the requirements of Federal laws. See 34 C.F.R. § 106.6(b).

<sup>5</sup> See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998); *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467, at \*8 (4th Cir. Apr. 19, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); *Macy v. Dep’t of Justice*, Appeal No. 012012082 (U.S. Equal Emp’t Opportunity Comm’n Apr. 20, 2012). See also U.S. Dep’t of Labor (USDOL), Training and Employment Guidance Letter No. 37-14, *Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System* (2015), [wdr.doleta.gov/directives/attach/TEGL/TEGL\\_37-14.pdf](http://wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf); USDOL, Job Corps, Directive: Job Corps Program Instruction Notice No. 14-31, *Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program* (May 1, 2015), [https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi\\_14\\_31.pdf](https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf); DOJ, Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (2014), [www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title\\_vii\\_memo.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf); USDOL, Office of Federal Contract Compliance Programs, Directive 2014-02, *Gender Identity and Sex Discrimination* (2014), [www.dol.gov/ofccp/regs/compliance/directives/dir2014\\_02.html](http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html).

<sup>6</sup> See *Lusardi v. Dep’t of the Army*, Appeal No. 0120133395 at 9 (U.S. Equal Emp’t Opportunity Comm’n Apr. 1, 2015) (“An agency may not condition access to facilities—or to other terms, conditions, or privileges of employment—on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual’s gender identity.”).

<sup>7</sup> See *G.G.*, 2016 WL 1567467, at \*1 n.1 (noting that medical authorities “do not permit sex reassignment surgery for persons who are under the legal age of majority”).

<sup>8</sup> 34 C.F.R. § 106.31(b)(4); see *G.G.*, 2016 WL 1567467, at \*8 & n.10 (affirming that individuals have legitimate and important privacy interests and noting that these interests do not inherently conflict with nondiscrimination principles); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting claim that allowing a transgender woman “merely [to be] present in the women’s faculty restroom” created a hostile environment); *Glenn*, 663 F.3d at 1321 (defendant’s proffered justification that “other women might object to [the plaintiff]’s restroom use” was “wholly irrelevant”). See also *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (recognizing that “mere negative attitudes, or fear . . . are not permissible bases for” government action).

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<sup>9</sup> See, e.g., Resolution Agreement, *In re Downey Unified Sch. Dist., CA*, OCR Case No. 09-12-1095, (Oct. 8, 2014), [www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf](http://www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf) (agreement to address harassment of transgender student, including allegations that peers continued to call her by her former name, shared pictures of her prior to her transition, and frequently asked questions about her anatomy and sexuality); Consent Decree, *Doe v. Anoka-Hennepin Sch. Dist. No. 11, MN* (D. Minn. Mar. 1, 2012), [www.ed.gov/ocr/docs/investigations/05115901-d.pdf](http://www.ed.gov/ocr/docs/investigations/05115901-d.pdf) (consent decree to address sex-based harassment, including based on nonconformity with gender stereotypes); Resolution Agreement, *In re Tehachapi Unified Sch. Dist., CA*, OCR Case No. 09-11-1031 (June 30, 2011), [www.ed.gov/ocr/docs/investigations/09111031-b.pdf](http://www.ed.gov/ocr/docs/investigations/09111031-b.pdf) (agreement to address sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes). See also *Lusardi*, Appeal No. 0120133395, at \*15 (“Persistent failure to use the employee’s correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment”).

<sup>10</sup> See, e.g., OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001), [www.ed.gov/ocr/docs/shguide.pdf](http://www.ed.gov/ocr/docs/shguide.pdf); OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), [www.ed.gov/ocr/letters/colleague-201010.pdf](http://www.ed.gov/ocr/letters/colleague-201010.pdf); OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), [www.ed.gov/ocr/letters/colleague-201104.pdf](http://www.ed.gov/ocr/letters/colleague-201104.pdf); OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), [www.ed.gov/ocr/docs/qa-201404-title-ix.pdf](http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf).

<sup>11</sup> See, e.g., Resolution Agreement, *In re Cent. Piedmont Cmty. Coll., NC*, OCR Case No. 11-14-2265 (Aug. 13, 2015), [www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf](http://www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf) (agreement to use a transgender student’s preferred name and gender and change the student’s official record to reflect a name change).

<sup>12</sup> 34 C.F.R. §§ 106.32, 106.33, 106.34, 106.41(b).

<sup>13</sup> See 34 C.F.R. § 106.31.

<sup>14</sup> 34 C.F.R. § 106.33.

<sup>15</sup> See, e.g., Resolution Agreement, *In re Township High Sch. Dist. 211, IL*, OCR Case No. 05-14-1055 (Dec. 2, 2015), [www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf](http://www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf) (agreement to provide any student who requests additional privacy “access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.”).

<sup>16</sup> 34 C.F.R. § 106.41(b). Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.

<sup>17</sup> 34 C.F.R. § 106.6(b), (c). An interscholastic athletic association is subject to Title IX if (1) the association receives Federal financial assistance or (2) its members are recipients of Federal financial assistance and have ceded controlling authority over portions of their athletic program to the association. Where an athletic association is covered by Title IX, a school’s obligations regarding transgender athletes apply with equal force to the association.

<sup>18</sup> The National Collegiate Athletic Association (NCAA), for example, reported that in developing its policy for participation by transgender students in college athletics, it consulted with medical experts, athletics officials, affected students, and a consensus report entitled *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), [https://www.ncaa.org/sites/default/files/NCLR\\_TransStudentAthlete%2B\(2\).pdf](https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf). See NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes 2*, 30-31 (2011), [https://www.ncaa.org/sites/default/files/Transgender\\_Handbook\\_2011\\_Final.pdf](https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf) (citing *On the Team*). The *On the Team* report noted that policies that may be appropriate at the college level may “be unfair and too complicated for [the high school] level of competition.” *On the Team* at 26. After engaging in similar processes, some state interscholastic athletics associations have adopted policies for participation by transgender students in high school athletics that they determined were age-appropriate.

<sup>19</sup> 34 C.F.R. § 106.34(a), (b). Schools may also separate students by sex in physical education classes during participation in contact sports. *Id.* § 106.34(a)(1).

<sup>20</sup> 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d); 34 C.F.R. § 106.34(c) (a recipient may offer a single-sex public nonvocational elementary and secondary school so long as it provides students of the excluded sex a “substantially

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equal single-sex school or coeducational school”).

<sup>21</sup> 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14(a).

<sup>22</sup> 20 U.S.C. § 1686; 34 C.F.R. § 106.32.

<sup>23</sup> See, e.g., Resolution Agreement, *In re Arcadia Unified Sch. Dist., CA*, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, (July 24, 2013), [www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf](http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf) (agreement to provide access to single-sex overnight events consistent with students’ gender identity, but allowing students to request access to private facilities).

<sup>24</sup> See 34 C.F.R. §§ 106.31(a), 106.31(b)(4). See also, *In re Downey Unified Sch. Dist., CA*, *supra* n. 9; *In re Cent. Piedmont Cmty. Coll., NC*, *supra* n. 11.

<sup>25</sup> 34 C.F.R. § 106.31(b)(7).

<sup>26</sup> 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA is administered by ED’s Family Policy Compliance Office (FPCO). Additional information about FERPA and FPCO is available at [www.ed.gov/fpc](http://www.ed.gov/fpc).

<sup>27</sup> 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1).

<sup>28</sup> 34 C.F.R. §§ 99.3, 99.31(a)(11), 99.37.

<sup>29</sup> 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

<sup>30</sup> Letter from FPCO to Institutions of Postsecondary Education 3 (Sept. 2009), [www.ed.gov/policy/gen/guid/fpc/doc/censuslettertohighered091609.pdf](http://www.ed.gov/policy/gen/guid/fpc/doc/censuslettertohighered091609.pdf).

<sup>31</sup> 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3, 99.37(a)(3).

<sup>32</sup> 34 C.F.R. § 99.20.

<sup>33</sup> 34 C.F.R. §§ 99.20-99.22.

<sup>34</sup> See 34 C.F.R. § 106.31(b)(4).

<sup>35</sup> 34 C.F.R. § 106.8(b).

# **EXHIBIT 3**

# Examples of Policies and Emerging Practices for Supporting Transgender Students



U.S. Department of Education

Office of Elementary and Secondary Education

Office of Safe and Healthy Students

May 2016

U.S. Department of Education  
Office of Elementary and Secondary Education  
Office of Safe and Healthy Students

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May 2016

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U.S. Department of Education, Office of Elementary and Secondary Education, Office of Safe and Healthy Students, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 2016).

This guide is also available on the Office of Safe and Healthy Students website at [www.ed.gov/oese/oshs/emergingpractices.pdf](http://www.ed.gov/oese/oshs/emergingpractices.pdf). Any updates to this guide will be available at this website.

If you need technical assistance, please contact the Office of Safe and Healthy Students at: [OESE.Info.SupportingTransgenderStudents@ed.gov](mailto:OESE.Info.SupportingTransgenderStudents@ed.gov)

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### **Examples of Policies and Emerging Practices for Supporting Transgender Students**

The U.S. Department of Education (“ED”) is committed to providing schools with the information they need to provide a safe, supportive, and nondiscriminatory learning environment for all students. It has come to ED’s attention that many transgender students (*i.e.*, students whose gender identity is different from the sex they were assigned at birth) report feeling unsafe and experiencing verbal and physical harassment or assault in school, and that these students may perform worse academically when they are harassed. School administrators, educators, students, and parents are asking questions about how to support transgender students and have requested clarity from ED. In response, ED developed two documents:

- ED’s Office for Civil Rights and the U.S. Department of Justice’s Civil Rights Division jointly issued a Dear Colleague Letter (“DCL”) about transgender students’ rights and schools’ legal obligations under Title IX of the Education Amendments of 1972.<sup>1</sup> Any school that has questions related to transgender students or wants to be prepared to address such issues if they arise should review the DCL.
- ED’s Office of Elementary and Secondary Education compiled the attached examples of policies<sup>2</sup> and emerging practices<sup>3</sup> that some schools are already using to support transgender students. We share some common questions on topics such as school records, privacy, and terminology, and then explain how some state and school district policies have answered these questions. We present this information to illustrate how states and school districts are supporting transgender students. We also provide information about and links to those policies at the end of the document, along with other resources that may be helpful as educators develop policies and practices for their own schools.

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<sup>1</sup> 20 U.S.C. §§ 1681-1688; Dear Colleague Letter: Transgender Students (May 13, 2016), [www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf](http://www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf).

<sup>2</sup> In this document, the term *policy* or *policies* refers generally to policies, guidance, guidelines, procedures, regulations, and resource guides issued by schools, school districts, and state educational agencies.

<sup>3</sup> ED considers *emerging practices* to be operational activities or initiatives that contribute to successful outcomes or enhance agency performance capabilities. Emerging practices are those that have been successfully implemented and demonstrate the potential for replication by other agencies. Emerging practices typically have not been rigorously evaluated, but still offer ideas that work in specific situations.

Each person is unique, so the needs of individual transgender students vary. But a school policy setting forth general principles for supporting transgender students can help set clear expectations for students and staff and avoid unnecessary confusion, invasions of privacy, and other harms. The education community continues to develop and revise policies and practices to address the rights of transgender students and reflect our evolving understanding and the individualized nature of transgender students' needs.

This document contains information from some schools, school districts, and state and federal agencies. Inclusion of this information does not constitute an endorsement by ED of any policy or practice, educational product, service, curriculum or pedagogy. In addition, this document references websites that provide information created and maintained by other entities. These references are for the reader's convenience. ED does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. This document does not constitute legal advice, create legal obligations, or impose new requirements.

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## **Student Transitions**

### **1. How do schools find out that a student will transition?**

Typically, the student or the student's parent or guardian will tell the school and ask that the school start treating the student in a manner consistent with the student's gender identity. Some students transition over a school break, such as summer break. Other students may undergo a gender transition during the school year, and may ask (or their parents may ask on their behalf) teachers and other school employees to respect their identity as they begin expressing their gender identity, which may include changes to their dress and appearance. Some school district or state policies address how a student or parent might provide the relevant notice to the school.

- Alaska's Matanuska-Susitna Borough School District issued guidelines ("Mat-Su Borough Guidelines") advising that transgender students or their parents or guardians should contact the building administrator or the student's guidance counselor to schedule a meeting to develop a plan to address the student's particular circumstances and needs.
- The guidelines issued by Washington's Superintendent of Public Instruction ("Washington State Guidelines") offer an example of a student who first attended school as a boy and, about midway through a school year, she and her family decided that she would transition and begin presenting as a girl. She prefers to dress in stereotypically feminine attire such as dresses and skirts. Although she is growing her hair out and consistently presents as female at school, her hair is still in a rather short, typically boyish haircut. The student, her parents, and school administrators asked her friends and teachers to use female pronouns to address her.

### **2. How do schools confirm a student's gender identity?**

Schools generally rely on students' (or in the case of younger students, their parents' or guardians') expression of their gender identity. Although schools sometimes request some form of confirmation, they generally accept the student's asserted gender identity. Some schools offer additional guidance on this issue.

- Los Angeles Unified School District issued a policy ("LAUSD Policy") noting that "[t]here is no medical or mental health diagnosis or treatment threshold that

students must meet in order to have their gender identity recognized and respected” and that evidence may include an expressed desire to be consistently recognized by their gender identity.

- The New York State Education Department issued guidance (“NYSED Guidance”) recommending that “schools accept a student’s assertion of his/her/their own gender identity” and provides examples of ways to confirm the assertion, such as a statement from the student or a letter from an adult familiar with the student’s situation. The same guidance also offers the following example: “In one middle school, a student explained to her guidance counselor that she was a transgender girl who had heretofore only been able to express her female gender identity while at home. The stress associated with having to hide her female gender identity by presenting as male at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor responded favorably to the request. The fact that the student presented no documentation to support her gender identity was not a concern since the school had no reason to believe the request was based on anything other than a sincerely held belief that she had a female gender identity.”
- Alaska’s Anchorage School District developed administrative guidelines (“Anchorage Administrative Guidelines”) noting that being transgender “involves more than a casual declaration of gender identity or expression but does not require proof of a formal evaluation and diagnosis. Since individual circumstances, needs, programs, facilities and resources may differ; administrators and school staff are expected to consider the needs of the individual on a case-by-case basis.”

### **3. How do schools communicate with the parents of younger students compared to older transgender students?**

Parents are often the first to initiate a conversation with the school when their child is transgender, particularly when younger children are involved. Parents may play less of a role in an older student’s transition. Some school policies recommend, with regard to an older student, that school staff consult with the student before reaching out to the student’s parents.

- The District of Columbia Public Schools issued guidance (“DCPS Guidance”) noting that “students may choose to have their parents participate in the transition process, but parental participation is not required.” The guidance further

recommends different developmentally appropriate protocols depending on grade level. The DCPS Guidance suggests that the school work with a young student's family to identify appropriate steps to support the student, but recommends working closely with older students prior to notification of family. The guidance also provides a model planning document with key issues to discuss with the student or the student's family.

- Similarly, the Massachusetts Department of Elementary and Secondary Education issued guidance ("Massachusetts Guidance") that notes: "Some transgender and gender nonconforming students are not openly so at home for reasons such as safety concerns or lack of acceptance. School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, *e.g.*, appropriate pronoun use, in written communication to the student's parent or guardian."
- Chicago Public Schools' guidelines ("Chicago Guidelines") provide: "When speaking with other staff members, parents, guardians, or third parties, school staff should not disclose a student's preferred name, pronoun, or other confidential information pertaining to the student's transgender or gender nonconforming status without the student's permission, unless authorized to do so by the Law Department."
- Oregon's Department of Education issued guidance stating, "In a case where a student is not yet able to self-advocate, the request to respect and affirm a student's identity will likely come from the student's parent. However, in other cases, transgender students may not want their parents to know about their transgender identity. These situations should be addressed on a case-by-case basis and school districts should balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in such situations should be the health and safety of the student, while also making sure that the student's gender identity is affirmed in a manner that maintains privacy and confidentiality."

## **Privacy, Confidentiality, and Student Records**

### **4. How do schools protect a transgender student's privacy regarding the student's transgender status?**

There are a number of ways schools protect transgender students' interests in keeping their transgender status private, including taking steps to prepare staff to consistently use the appropriate name and pronouns. Using transgender students' birth names or pronouns that do not match their gender identity risks disclosing a student's transgender status. Some state and school district policies also address how federal and state privacy laws apply to transgender students and how to keep information about a student's transgender status confidential.

- California's El Rancho Unified School District issued a regulation ("El Rancho Regulation") that provides that students have the right to openly discuss and express their gender identity, but also reminds school personnel to be "mindful of the confidentiality and privacy rights of [transgender] students when contacting parents/legal guardians so as not to reveal, imply, or refer to a student's actual or perceived sexual orientation, gender identity, or gender expression."
- The Chicago Guidelines provide that the school should convene an administrative support team to work with transgender students and/or their parents or guardians to address each student's individual needs and supports. To protect the student's privacy, this team is limited to "the school principal, the student, individuals the student identifies as trusted adults, and individuals the principal determines may have a legitimate interest in the safety and healthy development of the student."
- The Mat-Su Borough Guidelines state: "In some cases, a student may want school staff and students to know, and in other cases the student may not want this information to be widely known. School staff should take care to follow the student's plan and not to inadvertently disclose information that is intended to be kept private or that is protected from disclosure (such as confidential medical information)."
- The Massachusetts Guidance advises schools "to collect or maintain information about students' gender only when necessary" and offers an example: "One school reviewed the documentation requests it sent out to families and noticed that field trip permission forms included a line to fill in indicating the student's gender. Upon consideration, the school determined that the requested information was irrelevant to the field trip activities and deleted the line with the gender marker request."

**5. How do schools ensure that a transgender student is called by the appropriate name and pronouns?**

One of the first issues that school officials may address when a student notifies them of a gender transition is determining which name and pronouns the student prefers. Some schools have adopted policies to prepare all school staff and students to use a student's newly adopted name, if any, and pronouns that are consistent with a student's gender identity.

- A regulation issued by Nevada's Washoe County School District ("Washoe County Regulation") provides that: "Students have the right to be addressed by the names and pronouns that correspond to their gender identity. Using the student's preferred name and pronoun promotes the safety and wellbeing of the student. When possible, the requested name shall be included in the District's electronic database in addition to the student's legal name, in order to inform faculty and staff of the name and pronoun to use when addressing the student."
- A procedure issued by Kansas City Public Schools in Missouri ("Kansas City Procedure") notes that: "The intentional or persistent refusal to respect the gender identity of an employee or student after notification of the preferred pronoun/name used by the employee or student is a violation of this procedure."
- The NYSED Guidance provides: "As with most other issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student, and possibly the parent, with respect to name and pronoun use, and agree on a plan to reflect the individual needs of each student to initiate that name and pronoun use within the school. The plan also could include when and how this is communicated to students and their parents."
- The DCPS Guidance includes a school planning guide for principals to review with transgender students as they plan how to ensure the school environment is safe and supportive. The school planning guide allows the student to identify the student's gender identity and preferred name, key contacts at home and at school, as well as develop plans for access to restrooms, locker rooms, and other school activities.

## 6. How do schools handle requests to change the name or sex designation on a student's records?

Some transgender students may legally change their names. However, transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to financial limitations or legal restrictions imposed by state or local law). Some school district policies specify that they will use the name a student identifies as consistent with the student's gender identity regardless of whether the student has completed a legal name change.

- The NYSED Guidance provides that school records, including attendance records, transcripts, and Individualized Education Programs, be updated with the student's chosen name and offers an example: "One school administrator dealt with information in the student's file by starting a new file with the student's chosen name, entered previous academic records under the student's chosen name, and created a separate, confidential folder that contained the student's past information and birth name."
- The DCPS Guidance notes: "A court-ordered name or gender change is not required, and the student does not need to change their official records. If a student wishes to go by another name, the school's registrar can enter that name into the 'Preferred First' name field of [the school's] database."
- The Kansas City Procedure recognizes that there are certain situations where school staff or administrators may need to report a transgender student's legal name or gender. The procedure notes that in these situations, "school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information."
- The Chicago Guidelines state: "Students are not required to obtain a court order and/or gender change or to change their official records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity."
- The Massachusetts Guidance also addresses requests to amend records after graduation: "Transgender students who transition after having completed high school may ask their previous schools to amend school records or a diploma or transcript that include the student's birth name and gender. When requested, and when satisfied with the gender identity information provided, schools should amend the student's record."

## **Sex-Segregated Activities and Facilities**

### **7. How do schools ensure transgender students have access to facilities consistent with their gender identity?**

Schools often segregate restrooms and locker rooms by sex, but some schools have policies that students must be permitted to access facilities consistent with their gender identity and not be required to use facilities inconsistent with their gender identity or alternative facilities.

- The Washington State Guidelines provide: “School districts should allow students to use the restroom that is consistent with their gender identity consistently asserted at school.” In addition, no student “should be required to use an alternative restroom because they are transgender or gender nonconforming.”
- The Washoe County Regulation provides: “Students shall have access to use facilities that correspond to their gender identity as expressed by the student and asserted at school, irrespective of the gender listed on the student’s records, including but not limited to locker rooms.”
- The Anchorage Administrative Guidelines emphasize the following provision: “However, staff should not require a transgender or gender nonconforming student/employee to use a separate, nonintegrated space unless requested by the individual student/employee.”

### **8. How do schools protect the privacy rights of all students in restrooms or locker rooms?**

Many students seek additional privacy in school restrooms and locker rooms. Some schools have provided students increased privacy by making adjustments to sex-segregated facilities or providing all students with access to alternative facilities.

- The Washington State Guidelines provide that any student who wants increased privacy should be provided access to an alternative restroom or changing area. The guidelines explain: “This allows students who may feel uncomfortable sharing the facility with the transgender student(s) the option to make use of a separate restroom and have their concerns addressed without stigmatizing any individual student.”

- The NYSED Guidance gives an example of accommodating all students' interest in privacy: "In one high school, a transgender female student was given access to the female changing facility, but the student was uncomfortable using the female changing facility with other female students because there were no private changing areas within the facility. The principal examined the changing facility and determined that curtains could easily be put up along one side of a row of benches near the group lockers, providing private changing areas for any students who wished to use them. After the school put up the curtains, the student was comfortable using the changing facility."
- Atherton High School, in Jefferson County, Kentucky, issued a policy that offers examples of accommodations to address any student's request for increased privacy: "use of a private area within the public area of the locker room facility (e.g. nearby restroom stall with a door or an area separated by a curtain); use of a nearby private area (e.g. nearby restroom); or a separate changing schedule."
- The DCPS Guidance recommends talking to students to come up with an acceptable solution: "Ultimately, if a student expresses discomfort to any member of the school staff, that staff member should review these options with the student and ask the student permission to engage the school LGBTQ liaison or another designated ally in the building."

**9. How do schools ensure transgender students have the opportunity to participate in physical education and athletics consistent with their gender identity?**

Some school policies explain the procedures for establishing transgender students' eligibility to participate in athletics consistent with their gender identity. Many of those policies refer to procedures established by state athletics leagues or associations.

- The NYSED Guidance explains that "physical education is a required part of the curriculum and an important part of many students' lives. Most physical education classes in New York's schools are coed, so the gender identity of students should not be an issue with respect to these classes. Where there are sex-segregated classes, students should be allowed to participate in a manner consistent with their gender identity."
- The LAUSD Policy provides that "participation in competitive athletics, intramural sports, athletic teams, competitions, and contact sports shall be facilitated in a

manner consistent with the student's gender identity asserted at school and in accordance with the California Interscholastic Federation bylaws." The California Interscholastic Federation establishes a panel of professionals, including at least one person with training or expertise in gender identity health care or advocacy, to make eligibility decisions.

- The Rhode Island Interscholastic League's policy states that all students should have the opportunity to participate in athletics consistent with their gender identity, regardless of the gender listed on school records. The policy provides that the league will base its eligibility determination on the student's current transcript and school registration information, documentation of the student's consistent gender identification (*e.g.*, affirmed written statements from student, parent/guardian, or health care provider), and any other pertinent information.

#### **10. How do schools treat transgender students when they participate in field trips and athletic trips that require overnight accommodations?**

Schools often separate students by sex when providing overnight accommodations. Some school policies provide that students must be treated consistent with their gender identity in making such assignments.

- Colorado's Boulder Valley School District issued guidelines ("Boulder Valley Guidelines") providing that when a school plans overnight accommodations for a transgender student, it should consider "the goals of maximizing the student's social integration and equal opportunity to participate in overnight activity and athletic trips, ensuring the [transgender] student's safety and comfort, and minimizing stigmatization of the student."
- The Chicago Guidelines remind school staff: "In no case should a transgender student be denied the right to participate in an overnight field trip because of the student's transgender status."

## **Additional Practices to Support Transgender Students**

### **11. What can schools do to make transgender students comfortable in the classroom?**

Classroom practices that do not distinguish or differentiate students based on their gender are the most inclusive for all students, including transgender students.

- The DCPS Guidance suggests that “[w]herever arbitrary gender dividers can be avoided, they should be eliminated.”
- The Massachusetts Guidance states that “[a]s a general matter, schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose.”
- Minneapolis Public Schools issued a policy providing that students generally should not be grouped on the basis of sex for the purpose of instruction or study, but rather on bases such as student proficiency in the area of study, student interests, or educational needs for acceleration or enrichment.
- The Maryland State Department of Education issued guidelines that include an example of eliminating gender-based sorting of students: “Old Practice: boys line up over here.” New Practice: birthdays between January and June; everybody who is wearing something green, etc.”

### **12. How do school dress codes apply to transgender students?**

Dress codes that apply the same requirements regardless of gender are the most inclusive for all students and avoid unnecessarily reinforcing sex stereotypes. To the extent a school has a dress code that applies different standards to male and female students, some schools have policies that allow transgender students to dress consistent with their gender identity.

- Wisconsin’s Shorewood School District issued guidelines (“Shorewood Guidelines”) that allow students to dress in accordance with their gender identity and remind school personnel that they must not enforce a dress code more strictly against transgender and gender nonconforming students than other students.
- The Washington State Guidelines encourage school districts to adopt gender-neutral dress codes that do not restrict a student’s clothing choices on the basis of gender: “Dress codes should be based on educationally relevant considerations, apply

consistently to all students, include consistent discipline for violations, and make reasonable accommodations when the situation requires an exception.”

### **13. How do schools address bullying and harassment of transgender students?**

Unfortunately, bullying and harassment continue to be a problem facing many students, and transgender students are no exception. Some schools make clear in their nondiscrimination statements that prohibited sex discrimination includes discrimination based on gender identity and expression. Their policies also address this issue.

- The NYSED Guidance stresses the importance of protecting students from bullying and harassment because “[the] high rates experienced by transgender students correspond to adverse health and educational consequences,” including higher rates of absenteeism, lower academic achievement, and stunted educational aspirations.
- The Shorewood Guidelines specify that harassment based on a student’s actual or perceived transgender status or gender nonconformity is prohibited and notes that these complaints are to be handled in the same manner as other discrimination, harassment, and bullying complaints.
- The DCPS Guidance provides examples of prohibited harassment that transgender students sometimes experience, including misusing an individual’s preferred name or pronouns on purpose, asking personal questions about a person’s body or gender transition, and disclosing private information.

### **14. How do school psychologists, school counselors, school nurses, and school social workers support transgender students?**

School counselors can help transgender students who may experience mental health disorders such as depression, anxiety, and posttraumatic stress. Mental health staff may also consult with school administrators to create inclusive policies, programs, and practices that prevent bullying and harassment and ensure classrooms and schools are safe, healthy, and supportive places where all students, including transgender students, are respected and can express themselves. Schools will be in a better position to support transgender students if they communicate to all students that resources are available, and that they are competent to provide support and services to any student who has questions related to gender identity.

- The NYSED Guidance suggests that counselors can serve as a point of contact for transgender students who seek to take initial steps to assert their gender identity in school.
- The Chicago Guidelines convene a student administrative support team to determine the appropriate supports for transgender students. The team consists of the school principal, the student, adults that the student trusts, and individuals the principal determines may have a legitimate interest in the safety and healthy development of the student.

**15. How do schools foster respect for transgender students among members of the broader school community?**

Developing a clear policy explaining how to support transgender students can help communicate the importance the school places on creating a safe, healthy, and nondiscriminatory school climate for all students. Schools can do this by providing educational programs aimed at staff, students, families, and other community members.

- The Massachusetts Guidance informs superintendents and principals that they “need to review existing policies, handbooks, and other written materials to ensure they are updated to reflect the inclusion of gender identity in the student antidiscrimination law, and may wish to inform all members of the school community, including school personnel, students, and families of the recent change to state law and its implications for school policy and practice. This could take the form of a letter that states the school’s commitment to being a supportive, inclusive environment for all students.”
- The NYSED Guidance states that “school districts are encouraged to provide this guidance document and other resources, such as trainings and information sessions, to the school community including, but not limited to, parents, students, staff and residents.”

**16. What topics do schools address when training staff on issues related to transgender students?**

Schools can reinforce commitments to providing safe, healthy, and nondiscriminatory school climates by training all school personnel about appropriate and respectful treatment of all students, including transgender students.

- The Massachusetts Guidance suggests including the following topics in faculty and staff training “key terms related to gender identity and expression; the development of gender identity; the experiences of transgender and other gender nonconforming students; risks and resilience data regarding transgender and gender nonconforming students; ways to support transgender students and to improve school climate for gender nonconforming students; [and] gender-neutral language and practices.”
- The El Rancho Regulation states that the superintendent or designee “shall provide to employees, volunteers, and parents/guardians training and information regarding the district’s nondiscrimination policy; what constitutes prohibited discrimination, harassment, intimidation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include guidelines for addressing issues related to transgender and gender-nonconforming students.”

**17. How do schools respond to complaints about the way transgender students are treated?**

School policies often provide that complaints from transgender students be handled under the same policy used to resolve other complaints of discrimination or harassment.

- The Boulder Valley Guidelines provide that “complaints alleging discrimination or harassment based on a person’s actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination or harassment complaints.”
- The Anchorage Administrative Guidelines provide that “students may also use the Student Grievance Process to address any civil rights issue, including transgender issues at school.”

## Terminology

### **18. What terms are defined in current school policies on transgender students?**

Understanding the needs of transgender students includes understanding relevant terminology. Most school policies define commonly used terms to assist schools in understanding key concepts relevant to transgender students. The list below is not exhaustive, and only includes examples of some of the most common terms that school policies define.

- *Gender identity* refers to a person’s deeply felt internal sense of being male or female, regardless of their sex assigned at birth. (Washington State Guidelines)
- *Sex assigned at birth* refers to the sex designation, usually “male” or “female,” assigned to a person when they are born. (NYSED Guidance)
- *Gender expression* refers to the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms. (Washoe County Regulation)
- *Transgender* or *trans* describes a person whose gender identity does not correspond to their assigned sex at birth. (Massachusetts Guidance)
- *Gender transition* refers to the process in which a person goes from living and identifying as one gender to living and identifying as another. (Washoe County Regulation)
- *Cisgender* describes a person whose gender identity corresponds to their assigned sex at birth. (NYSED Guidance)
- *Gender nonconforming* describes people whose gender expression differs from stereotypic expectations. The terms *gender variant* or *gender atypical* are also used. Gender nonconforming individuals may identify as male, female, some combination of both, or neither. (NYSED Guidance)
- *Intersex* describes individuals born with chromosomes, hormones, genitalia and/or other sex characteristics that are not exclusively male or female as defined by the medical establishment in our society. (DCPS Guidance)
- *LGBTQ* is an acronym that stands for “lesbian, gay, bisexual, transgender, and queer/questioning.” (LAUSD Policy)

- *Sexual orientation* refers to a person’s emotional and sexual attraction to another person based on the gender of the other person. Common terms used to describe sexual orientation include, but are not limited to, heterosexual, lesbian, gay, and bisexual. Sexual orientation and gender identity are different. (LAUSD Policy)

**19. How do schools account for individual preferences and the diverse ways that students describe and express their gender?**

Some students may use different terms to identify themselves or describe their situations. For example, a transgender male student may identify simply as male, consistent with his gender identity. The same principles apply even if students use different terms. Some school policies directly address this question and provide additional guidance.

- The Washington State Guidelines recognize how “terminology can differ based on religion, language, race, ethnicity, age, culture and many other factors.”
- Washington’s Federal Way School District issued a resource guide that states: “Keep in mind that the meaning of gender conformity can vary from culture to culture, so these may not translate exactly to Western ideas of what it means to be transgender. Some of these identities include Hijra (South Asia), Fa’afafine (Samoa), Kathoey (Thailand), Travesti (South America), and Two-Spirit (Native American/First Nations).”
- The Washoe County Regulation, responding to cultural diversity within the state, offers examples of “ways in which transgender and gender nonconforming youth describe their lives and gendered experiences: trans, transsexual, transgender, male-to-female (MTF), female-to-male (FTM), bi-gender, two-spirit, trans man, and trans woman.”
- The DCPS Guidance provides this advice to staff: “If you are unsure about a student’s preferred name or pronouns, it is appropriate to privately and tactfully ask the student what they prefer to be called. Additionally, when speaking about a student it is rarely necessary to label them as being transgender, as they should be treated the same as the rest of their peers.”

### Cited Policies on Transgender Students

- Anchorage School District (AK): *Administrative Guidelines: Working with Transgender and Gender Nonconforming Students and Employees* (2015) (on file with ED)
- Atherton High School, Jefferson County School District (KY), *Policy on School Space* (2014), [www.jefferson.k12.ky.us/schools/high/atherton/SBDMDocuments/Policy%20500%20Draft-%20Los%20Angeles%20Unified%20School%20District%20Revised%20Model.pdf](http://www.jefferson.k12.ky.us/schools/high/atherton/SBDMDocuments/Policy%20500%20Draft-%20Los%20Angeles%20Unified%20School%20District%20Revised%20Model.pdf)
- Boulder Valley School District (CO), *Guidelines Regarding the Support of Students and Staff Who Are Transgender and/or Gender Nonconforming* (2016), <http://www.bvsvd.org/policies/Policies/AC-E3.pdf>
- California Interscholastic Federation, *Guidelines for Gender Identity Participation* (2015), [http://static.psb.in.com/m/5/0ndq7wwfgh2em9/Guidelines\\_for\\_Gender\\_Identity\\_Participation.pdf](http://static.psb.in.com/m/5/0ndq7wwfgh2em9/Guidelines_for_Gender_Identity_Participation.pdf)
- Chicago Public Schools (IL), *Guidelines Regarding the Support of Transgender and Gender Nonconforming Students* (2016), [cps.edu/SiteCollectionDocuments/TL\\_TransGenderNonconformingStudents\\_Guidelines.pdf](http://cps.edu/SiteCollectionDocuments/TL_TransGenderNonconformingStudents_Guidelines.pdf)
- District of Columbia Public Schools, *Transgender and Gender-Nonconforming Policy Guidance* (2015), [dcps.dc.gov/publication/dcps-transgender-and-gender-non-conforming-policy-guidance](http://dcps.dc.gov/publication/dcps-transgender-and-gender-non-conforming-policy-guidance)
- El Rancho Unified School District, *Transgender and Gender-Nonconforming Students* (AR 5145.3) (2014), [www.erusd.org/pdf/board\\_policies/5145\\_3.pdf](http://www.erusd.org/pdf/board_policies/5145_3.pdf)
- Federal Way Public Schools (WA), *Working with Transgender and Gender-Nonconforming Students and Staff* (2014-2015), [www.fwps.net/districtresources/wp-content/uploads/sites/32/2013/12/FWPS\\_Transgender3.pdf?7a385a](http://www.fwps.net/districtresources/wp-content/uploads/sites/32/2013/12/FWPS_Transgender3.pdf?7a385a)
- Kansas City 33 School District (MO), *Prohibition Against Discrimination, Harassment and Retaliation (Transgender and Gender Nonconforming Employee and Students)* (2013), [eboard.eboardsolutions.com/ePolicy/policy.aspx?PC=AC-AP\(1\)&Sch=228&S=228&RevNo=1.01&C=A&Z=R](http://eboard.eboardsolutions.com/ePolicy/policy.aspx?PC=AC-AP(1)&Sch=228&S=228&RevNo=1.01&C=A&Z=R)
- Los Angeles Unified School District (CA), *Transgender Students – Ensuring Equity and Nondiscrimination* (2014), [notebook.lausd.net/pls/ptl/docs/PAGE/CA\\_LAUSD/FLDR\\_ORGANIZATIONS/FLDR\\_GENERAL\\_COUNSEL/BUL-6224.1%20TRANSGENDER%20POLICY,%2008-15-14%20-%20ADDED%20ED%20CODE%20221%205.PDF](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/FLDR_GENERAL_COUNSEL/BUL-6224.1%20TRANSGENDER%20POLICY,%2008-15-14%20-%20ADDED%20ED%20CODE%20221%205.PDF)

- Maryland State Department of Education, *Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination* (2015), [marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student\\_services\\_alt/docs/ProvidingSafeSpacesTransgendergenderNonConformingYouth012016.pdf](http://marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student_services_alt/docs/ProvidingSafeSpacesTransgendergenderNonConformingYouth012016.pdf)
- Massachusetts Department of Elementary and Secondary Education, *Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment Nondiscrimination on the Basis of Gender Identity* (2014), [www.doe.mass.edu/ssce/GenderIdentity.pdf](http://www.doe.mass.edu/ssce/GenderIdentity.pdf)
- Matanuska-Susitna Borough School District (AK), *Transgender Student Guidelines* (2015), [www.matsuk12.us/site/handlers/filedownload.ashx?moduleinstanceid=10846&dataid=41646&FileName=Title IX--Transgender Students Guidelines.pdf](http://www.matsuk12.us/site/handlers/filedownload.ashx?moduleinstanceid=10846&dataid=41646&FileName=Title IX--Transgender Students Guidelines.pdf)
- Minneapolis Public Schools (MN), *Permissible Grouping Principles* (2014), [policy.mpls.k12.mn.us/uploads/regulation\\_6135\\_a.pdf](http://policy.mpls.k12.mn.us/uploads/regulation_6135_a.pdf)
- New York State Education Department, *Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students* (2015), [www.p12.nysed.gov/dignityact/documents/Transg\\_GNCGuidanceFINAL.pdf](http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf)
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- Rhode Island Interscholastic League, *Rules & Regulations* (Article I, Section 22 – Gender Identity), [www.riil.org/files/8214/3861/6354/ARTICLE\\_1\\_ORGANIZATION\\_2015.pdf](http://www.riil.org/files/8214/3861/6354/ARTICLE_1_ORGANIZATION_2015.pdf)
- Shorewood School District (WI), *Nondiscrimination Guidelines Related to Students Who Are Transgender and Students Nonconforming to Gender Role Stereotypes* (2014), [www.shorewood.k12.wi.us/uploaded/Board\\_Documents/Policies/411\\_Guidelines\\_and\\_Exhibit.pdf?1393865642372](http://www.shorewood.k12.wi.us/uploaded/Board_Documents/Policies/411_Guidelines_and_Exhibit.pdf?1393865642372)
- Washington Office of State Superintendent of Public Instruction, *Prohibiting Discrimination in Washington Public Schools* (2012), [www.k12.wa.us/Equity/pubdocs/ProhibitingDiscriminationInPublicSchools.pdf](http://www.k12.wa.us/Equity/pubdocs/ProhibitingDiscriminationInPublicSchools.pdf)
- Washoe County School District (NV), *Gender Identity and Gender Non-Conformity – Students* (2015), [washoecountyschools.net/csi/pdf\\_files/5161%20Reg%20-%20Gender%20Identity%20v1.pdf](http://washoecountyschools.net/csi/pdf_files/5161%20Reg%20-%20Gender%20Identity%20v1.pdf)

### Select Federal Resources on Transgender Students

- U.S. Department of Education
  - Office for Civil Rights and U.S. Department of Justice's Civil Rights Division, *Dear Colleague Letter: Transgender Students* (May 13, 2016), [www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf](http://www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf)
  - Office for Civil Rights, *Resources for Transgender and Gender-Nonconforming Students*, [www.ed.gov/ocr/lgbt.html](http://www.ed.gov/ocr/lgbt.html)
  - Office for Civil Rights, *Publications on Title IX*, [www.ed.gov/about/offices/list/ocr/publications.html#TitleIX](http://www.ed.gov/about/offices/list/ocr/publications.html#TitleIX)
  - Office for Civil Rights, *How to File a Discrimination Complaint*, [www.ed.gov/about/offices/list/ocr/docs/howto.html](http://www.ed.gov/about/offices/list/ocr/docs/howto.html)
  - National Center on Safe Supportive Learning Environments, [safesupportivelearning.ed.gov](http://safesupportivelearning.ed.gov)
- U.S. Department of Health and Human Services
  - Administration for Children and Families, *Resources for Serving Lesbian, Gay, Bisexual and Transgender Youth*, <http://ncfy.acf.hhs.gov/features/serving-lesbian-gay-bisexual-transgender-and-questioning-youth-open-arms/resources-serving>
  - Centers for Disease Control and Prevention, *LGBT Youth Resources*, [www.cdc.gov/lgbthealth/youth-resources.htm](http://www.cdc.gov/lgbthealth/youth-resources.htm)
  - Homelessness Resource Center, *Homeless Populations: LGBTQI2-S Youth*, <http://homeless.samhsa.gov/Channel/LGBTQ-153.aspx>
  - Stopbullying.gov, *Bullying and LGBT Youth*, <http://www.stopbullying.gov/at-risk/groups/lgbt>
- U.S. Department of Housing and Urban Development
  - *Community-Wide Prevention of LGBTQ Youth Homelessness* (June 2015), <https://www.hudexchange.info/resources/documents/LGBTQ-Youth-Homelessness-Prevention-Initiative-Overview.pdf>

- U.S. Department of Labor
  - Office of Job Corps, *Directive: Job Corps Program Instruction Notice No. 14-31* (May 1, 2015), [https://supportservices.jobcorps.gov/Program Instruction Notices/pi 14 31.pdf](https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf)

# **EXHIBIT 4**



**U.S. Department of Justice**  
Civil Rights Division



**U.S. Department of Education**  
Office for Civil Rights

**Dear Colleague Letter**  
**Notice of Language Assistance**

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Aviso a personas con dominio limitado del idioma inglés:** Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**給英語能力有限人士的通知:** 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov)。

**Thông báo dành cho những người có khả năng Anh ngữ hạn chế:** Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**영어 미숙자를 위한 공고:** 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일 주소 [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov) 으로 연락하시기 바랍니다.

**Paunawa sa mga Taong Limitado ang Kaalaman sa English:** Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Уведомление для лиц с ограниченным знанием английского языка:** Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).



**U.S. Department of Justice**  
*Civil Rights Division*



**U.S. Department of Education**  
*Office for Civil Rights*

February 22, 2017

Dear Colleague:

The purpose of this guidance is to inform you that the Department of Justice and the Department of Education are withdrawing the statements of policy and guidance reflected in:

- Letter to Emily Prince from James A. Ferg-Cadima, Acting Deputy Assistant Secretary for Policy, Office for Civil Rights at the Department of Education dated January 7, 2015; and
- Dear Colleague Letter on Transgender Students jointly issued by the Civil Rights Division of the Department of Justice and the Department of Education dated May 13, 2016.

These guidance documents take the position that the prohibitions on discrimination “on the basis of sex” in Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and its implementing regulations, see, e.g., 34 C.F.R. § 106.33, require access to sex-segregated facilities based on gender identity. These guidance documents do not, however, contain extensive legal analysis or explain how the position is consistent with the express language of Title IX, nor did they undergo any formal public process.

This interpretation has given rise to significant litigation regarding school restrooms and locker rooms. The U.S. Court of Appeals for the Fourth Circuit concluded that the term “sex” in the regulations is ambiguous and deferred to what the court characterized as the “novel” interpretation advanced in the guidance. By contrast, a federal district court in Texas held that the term “sex” unambiguously refers to biological sex and that, in any event, the guidance was “legislative and substantive” and thus formal rulemaking should have occurred prior to the adoption of any such policy. In August of 2016, the Texas court preliminarily enjoined enforcement of the interpretation, and that nationwide injunction has not been overturned.

In addition, the Departments believe that, in this context, there must be due regard for the primary role of the States and local school districts in establishing educational policy.

In these circumstances, the Department of Education and the Department of Justice have decided to withdraw and rescind the above-referenced guidance documents in order to further and more completely consider the legal issues involved. The Departments thus will not rely on the views expressed within them.

[OCR-000108]

Dear Colleague Letter

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Please note that this withdrawal of these guidance documents does not leave students without protections from discrimination, bullying, or harassment. All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment. The Department of Education Office for Civil Rights will continue its duty under law to hear all claims of discrimination and will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms. The Department of Education and the Department of Justice are committed to the application of Title IX and other federal laws to ensure such protection.

This guidance does not add requirements to applicable law. If you have questions or are interested in commenting on this letter, please contact the Department of Education at [ocr@ed.gov](mailto:ocr@ed.gov) or 800-421-3481 (TDD: 800-877-8339); or the Department of Justice at [education@usdoj.gov](mailto:education@usdoj.gov) or 877-292-3804 (TTY: 800-514-0383).

Sincerely,

/s/

Sandra Battle  
Acting Assistant Secretary for Civil Rights  
U.S. Department of Education

/s/

T.E. Wheeler, II  
Acting Assistant Attorney General for Civil Rights  
U.S. Department of Justice