

Law Office of Asaf Orr

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October 10, 2011

VIA FACSIMILE ONLY

United States Department of Education
Office of Civil Rights
50 Beale Street, Suite 7200
San Francisco, CA 94105-1813
Fax: (415) 486-5570

RE: Student v. Arcadia Unified School District

To Whom It May Concern:

I write to file a formal complaint against Arcadia Unified School District (AUSD or "District") on behalf of the above-referenced student. As detailed below, AUSD is discriminating against Student on the basis of his sex in violation of Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. § 1681(a).

I. Contact Information for the Parties

Student Information:

Parents' Names: Father & Mother
Student Name: Student
DOB:
Address:

Telephone:

District Information:

Superintendent: Dr. Joel Shawn, Ed.D
District Name: Arcadia Unified School District
Address: 234 Campus Drive
Arcadia, CA 91007
Telephone: (626) 821-8300
Fax: (626) 821-8647

II. Statement of Facts

Student is a twelve-year-old transgender boy who loves the Beatles and playing the drums. Although initially raised as a female, as soon as Student was able to express himself, he made it very clear that he was a boy. At age two, Student would throw tantrums every time his mother, Mother would try to dress him in stereotypical girls' clothing. Not knowing what to do, Mother struck a deal with Student if he wanted to pick his clothes, he would have to dress himself. Thus, at the tender age of two, Student learned to dress himself, a skill that his typically developing peers would not grasp for some time.

Feeling the need to prove his masculinity, Student spent much of his early childhood in superhero costumes. By age four, all of Student's friends instructed their parents to buy him toys meant for boys, as they had seen him tantrum each time he received a present typically given to girls. One year, he received a toy razor and bottle shaving cream for his birthday, which immediately became his favorite toy. Although he had not started telling his friends he was a boy, he readily shared that fact with his cousins at family gatherings. At school, when asked to draw a self-portrait, he would always draw a boy and sometimes would add a beard for emphasis, defying the expectations of his teachers. As Student grew older, his discomfort with his female body and distress related to his gender identity intensified. Around the age of five or six, Student began mentioning to his parents that he continually prayed to God, asking that God put him in the male body he was supposed to have, but that God never listened.

That was the turning point for Student's parents. Slowly, Student's parents began to allow Student to express his male gender identity more openly. At first, Mother began calling him, , a nickname based on the middle name he was given at birth, . Then, he was allowed to dress in more masculine clothes. Eventually, Student was allowed to cut his hair from a length that reached far down his back to shoulder-length. With each subsequent step, Student's level of distress and anger decreased.

The second turning point occurred when Student was in fifth grade at Elementary School in AUSD. While Student was in fifth grade, Student and his family made the decision that he would officially transition to living as male on a full-time basis at the beginning of sixth grade. Despite the difficulties of presenting as a girl in school, Student was comforted by the fact that next school year everything would be different. That year the entire fifth grade went on an overnight field trip to a science camp. AUSD had arranged for Student to attend the camp with his mother. They were placed in a room together in the girls' cabin, while the rest of his friends were able to bunk with their peers. For Student the trip was a disaster. Student's female peers taunted him relentlessly referring to him as "it" and attempting to block him from entering the girls' cabin because of his ambiguous gender. Each night, Student cried himself to sleep. Each morning, Student would have to hear stories of the good times his friends had the night before, longing for the day that he could room with his buddies.

Unfortunately, the taunting continued even after the group returned to school. Determined to end all speculation and ambiguity, Student and his family decided to move up the date of his full transition. Student immediately cut his hair and obtained a court-ordered name change. By the end of fifth grade, Student was living full-time as a boy. He could not wait for sixth grade at a

new school where he would be able to get a fresh start with a whole new group of students who never knew him as a girl.

In sixth grade, Student moved to Middle School. With the exception of the accommodations AUSD provided Student for restroom and locker room access, Student's sixth-grade year went relatively smoothly. Towards the end of the school year, AUSD informed the sixth-graders that they would be going on another overnight field trip to a science camp, the Science Camp at the beginning of seventh grade. Student was excited for the trip, believing that he would not experience any of the problems he had during the fifth-grade trip because now he was a boy. What made the trip even more exciting is that AUSD informed the students that no parents would be allowed on the trip, the chaperons and supervisors would be camp employees and teachers.

Wanting to ensure that everything was in place for Student's seventh-grade science trip to the Student's parents met with the school principal of Middle School, the Assistant Principal, and Dr. Robert Leri, AUSD's Deputy Superintendent of Educational Services and Programs on August 30, 2011. During that meeting, Dr. Leri informed Student's parents that AUSD was unsure of the accommodations that would be provided for Student but that he would let them know as soon as possible. On or about September 21, 2011, Student's father, Father had a follow-up meeting with Principal to discuss the accommodations for the upcoming trip to the Science Camp. At that meeting, Principal informed Father that AUSD will require Student to bunk in a separate cabin and that Father would have to chaperon as a condition of his attendance on the field trip.

That afternoon, Father told Student about his meeting with Dr. Leri. Student's dreams were crushed. Student got up from the table where he had been eating his dinner and went straight to his room, slamming the door shut. Once there, he began to sob. Student did not want to talk or eat for several hours. Eventually, he began to open up to Mother. Feeling hurt and betrayed by AUSD, Student resorted to planning the lies he would tell his friends to cover for the discriminatory treatment he was being forced to endure, an exercise that was unfortunately all too familiar to him.

Approximately three weeks before the field trip, Student's parents retained the undersigned attorney to assist them in convincing AUSD to permit Student to bunk with his buddies in the boys' cabin and without his father being present. On October 4, 2011, I spoke with Dr. Leri who directed me to AUSD's general counsel, Margaret Chidester. The following day, I spoke with Stephen Chidester and Alexandria Davidson, attorneys in the Law Offices of Margaret Chidester & Associates. At the end of our conversation, Mr. Chidester assured me that his client would respond to Student's renewed request by Friday, October 7, 2011. In the intervening days, Student and his classmates were asked to list with whom they wanted to room while at the Science Camp. Hoping that AUSD would change its mind, Student submitted the names of the friends he would like to room with, a list that was provided to AUSD's counsel as well. The chatter and gossip about who will room with whom and general excitement about the trip began to consume conversations among Student and his friends. With the possibility that he would again experience the ostracism he faced during the fifth-grade field trip hanging over him, Student has tried to contain any further excitement about the trip.

As promised, AUSD responded on October 7, 2011. (Ex. A). Citing District's authority under the California Education Code to maintain separate facilities for boys and girls, District maintained that it was justified in requiring that Student be housed in neither facility. Instead, he would be cast away in a separate facility and be the only student whose parent was required to attend the field trip.

Needless to say, Student was despondent over the news that AUSD was refusing to follow its mandate not to discriminate on the basis of sex and gender identity. Both of the treating professionals working with Student Dr. Johanna Olson, MD, Student's treating physician, and Susan Landon, MFT, Student's treating therapist, support Student's request to stay in the boys' cabin, a request that is consistent with the standards of care for transgender students and critical to his continued mental health. (Exs. B & C). In addition to the emotional toll that this experience will have on Student AUSD's requirement that Father chaperon the trip will affect Student's family financially, a family that is already struggling to make ends meet.

The field trip is currently scheduled for October 26-28, 2011.

III. Legal Allegations

AUSD's refusal to permit Student to stay in the boys' cabin during the field trip to the Science Camp and its insistence that Father accompany Student on the trip constitute a violation of Title IX. According to federal law, “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). The regulations implementing that mandate detail the scope of Title IX to include “any academic, extracurricular, research, occupational training, or other education program or activity.” 34 C.F.R. § 106.31(a). Moreover, that regulation identifies discrimination as “[p]rovid[ing] different aid, benefits, or services or provid[ing] aid, benefits, or services in a different manner.” 34 C.F.R. § 106.31(b)(2). Based on information and belief, AUSD receives federal financial assistance thus obligating it to comply with Title IX. AUSD's conduct violates Title IX under two distinct theories: (1) gender stereotyping; and (2) change of sex. Each of those theories will be discussed in turn.

- a. *District is Discriminating Against Student on the Basis of Gender Stereotypes by Requiring that Student Stay in a Separate Cabin and Be Accompanied by His Father.*

The conditions imposed on Student attending the field trip at the Science Camp are a classic case of sex stereotyping. Adopting the holdings of *Price Waterhouse v. Hopkins* and other Title VII cases, federal courts across the United States have found that discrimination on the basis of gender stereotyping is a cognizable violation of Title IX. *See, e.g., Wolfe v. Fayetteville, Ark. Sch. Dist.*, 648 F.3d 860, *16 (8th Cir. 2011); *Pratt v. Indian River Cent. Sch. Dist.*, Dkt. No. 7:09-CV-0411 (GTS/GHL), 2011 U.S. Dist. LEXIS 32596, *40-41 (N.D.N.Y. Mar. 29, 2011); *Tingley-Kelley v. Trs. of Univ. of Pa.*, 677 F. Supp. 2d 764, 775 (E.D.Pa. 2010); *Turpin v. Good*, Dkt. No. 1:07-cv-1205-LJM-WGH, 2011 U.S. Dist. LEXIS 62772, *7 (S.D. Ind. Jun. 24, 2010);

Riccio v. New Haven Bd. of Educ., 467 F. Supp. 2d 219, 226 (D. Conn. 2006); *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 394 F. Supp. 2d 1299, 1302 (D. Kan. 2005). Similarly, in its October 2010 “Dear Colleague” letter, the United States Department of Education's Office of Civil Rights advised every school district in the country that the federal government also interprets the scope of Title IX to include claims based on gender stereotyping. As demonstrated by the cases cited above, discrimination on the basis of gender stereotyping can take on a wide variety of forms ranging from verbal and physical harassment to denial of admission to an educational institution. Although the above-cited cases do not involve transgender students, the analysis remains the same. The elements for stating a claim under that statute are: (1) the plaintiff was excluded from participation in, denied the benefits of, or subjected to discrimination in an educational program; (2) that the program receives federal financial assistance; and (3) that plaintiff's exclusion was on the basis of gender. *Tingley-Kelley*, 677 F. Supp. 2d at 775.

Student's identity as a transgender student automatically places him outside gender stereotypes, as he is a boy with female genitalia. AUSD's decision to isolate Student and require his father to chaperon the field trip was based squarely on Student's gender nonconformity. As AUSD's counsel stated in their letter, AUSD is permitted to maintain sex-separated facilities for boys and girls. Yet, when it came to classifying Student within that rubric, AUSD determined that he fell outside both categories, warranting placement in a separate cabin by himself with this father as his chaperon. As detailed in the factual statement above and the attached letters of support, Student has already suffered emotional harm as a result of AUSD's decisions and will likely suffer more harm if AUSD is permitted to impose its conditions on Student's attendance at the Science Camp

Furthermore, that differential treatment will highlight to his peers that Student does not conform to gender stereotypes because otherwise he would have been in the boys' cabin, a distinction that previously led to vicious gender-based harassment. Thus, the harm caused by AUSD's decision could ripple outwards to create a hostile school environment on the basis of Student's gender nonconformity, conditions that could also constitute a violation of Title IX.

Consequently, AUSD's requirement that Student stay in a separate cabin apart from his peers and have his father as his personal chaperon constitutes discrimination under Title IX as AUSD is providing Student with aid, benefits, and services in a different manner than his peers due to Student's failure to conform to gender stereotypes.

b. District is Discriminating Against Student on the Basis of Student's Change of Sex by Requiring that Student Stay in a Separate Cabin and Be Accompanied by His Father.

AUSD's conduct also discriminates against Student on the basis of his change of sex. When faced with issues of first impression under Title IX, courts have often looked to cases decided under Title VII to formulate the applicable legal standards and principles. *See, e.g., Wolfe*, 648 F.3d at *11; *Gossett v. Okla. ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1176 (10th Cir. 2001); *Weinstock v. Columbia Univ.*, 224 F.3d 33, 42 n.1 (2d Cir. 2000); *Oona v. McCaffrey*, 143 F.3d 473, 476 (9th Cir. 1998); *Torres v. Pisano*, 116 F.3d 625, 630 n.3 (2d Cir. 1997). In the context of sex discrimination against transgender employees, a District Court

previously held that discrimination based on a “change of sex” constitutes actionable discrimination on basis of sex under Title VII. *Schroer v. Billington*, 577 F. Supp. 2d 293, 307 (D.D.C. 2008). The court based its ruling on the United States Supreme Court’s expansion of the scope of sex discrimination through cases such as *Price Waterhouse* and *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998). *Schroer*, 577 F. Supp. 2d at 307-08. That analysis should apply with equal force to transgender plaintiffs in the Title IX context.

Although Student is not yet at the stage of his transition where he is considering sex-reassignment surgery, “Student has undertaken all of the available and necessary intervention to live his life as a boy, his asserted gender.” (Ex. B, p1-2). Moreover, with the recent changes to the standards for obtaining a court-ordered change to the gender marker on birth certificates issued by California, Student is already planning change the gender on his birth certificate to male, making him a male in the eyes of the law. Had Student been born with a male body, there would be no issue; AUSD would unquestionably permit Student to room in the boys’ cabin with his peers and would not have required his father to chaperon. Instead, based on the fact that Student was not born in a male body but transitioned to living as a male from a female body, AUSD determined that he had to be separated from peers while at the Science Camp and had to have his father chaperon the trip.

As previously noted, AUSD’s decision to discriminate against Student because of his transition to male has already taken a toll on Student’s mental health, a toll that is only expected to increase during and after the overnight field trip to the Science Camp

Therefore, AUSD has violated Title IX by providing Student with aid, benefits, and services in a different manner based on his transition to living as a male, discriminatory treatment that is affecting his ability to access his education.

IV. Conclusion

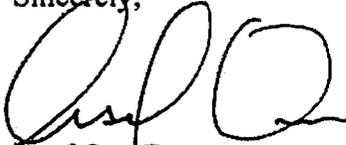
My client respectfully requests that the United States Department of Education’s Office of Civil Rights find that AUSD violated Title IX by discriminating against Student on the basis of sex. Furthermore, my client respectfully requests that AUSD be ordered to undertake the following corrective actions:

1. Permit Student to stay in the boys’ cabin at the Science Camp and in a room with some or all of the students whose names Student previously provided AUSD;
2. Withdraw its requirement that Father chaperon the field trip to the Science Camp
3. Provide training to all the members of the Board of Education, District Administration, and school principals regarding the rights of students under Title IX, including the rights of transgender students; and
4. Revise all relevant District policies to ensure conformity with the requirements of Title IX.

If you have any questions, please do not hesitate to contact me at (415) 568-0540.

Thank you in advance for your time and attention to this pressing matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Asaf Orr', written in a cursive style.

Asaf Orr, Esq.
Law Office of Asaf Orr

Cc: Margaret Chidester, Esq. (via facsimile only – (949) 474-8540)

Exhibit A

LAW OFFICES OF
MARGARET A. CHIDESTER & ASSOCIATES
17762 COWAN, FIRST FLOOR
IRVINE, CALIFORNIA 92614-8096

MARGARET A. CHIDESTER*
STEVEN R. CHIDESTER
ALEXANDRIA M. DAVIDSON

TELEPHONE: (949) 474-5040

TELECOPIER: (949) 474-8540

m.chidester@californiaschoollaw.net

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AR-80.19

REF. OUR FILE

TELECOMMUNICATION COVER PAGE

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Asaf Orr, Esq.

TELECOPIER NO.: (323) 908-0135 CITY: Los Angeles

COPY: Dr. Joel Shawn, Superintendent

TELECOPIER NO.: (626) 821-8647 CITY: Arcadia

COPY: Dr. Robert Leri, Deputy Superintendent
Educational Services and Programs

TELECOPIER NO.: (626) 446-3064 CITY: Arcadia

CLIENT: Arcadia Unified School District

FROM: *MAC* Margaret A. Chidester

TOTAL PAGES (Including Cover): 3 DATE: October 7, 2011

MESSAGE (If Any):

Please see the attached correspondence.

The information contained in this facsimile message may be confidential, proprietary and/or legally privileged information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any copying, dissemination or distribution of confidential, proprietary or privileged information is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone, and we will arrange for the return of the facsimile. Thank you.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL AS SOON AS POSSIBLE: (949) 474-5040.

Operator: dg Time Sent: 9:38

LAW OFFICES OF
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October 6, 2011

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m.chidester@californiaschools.net

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REF. OUR FILE

AR-80.19

VIA FACSIMILE AND CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Law Office of Asaf Orr
P.O. Box 360403
Los Angeles, California 90036

Attention: Asaf Orr, Esq.

Re: Attendance of Student
At Science Camp

Dear Mr. Orr:

This office is general counsel to the Arcadia Unified School District. Thank you for your correspondence of October 5, 2011, and for providing the legal authorities upon which you rely.

Upon review, we find the court decisions you cite to be inapposite. You concede that "there is no case law on point." We disagree with your contention that "California law prohibits discrimination on the bases of gender identity without exception" to the extent that you overlook California Education Code section 231, which states:

"Nothing herein shall be construed to prohibit any educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes, so long as comparable facilities are provided."

LAW OFFICES OF

MARGARET A. CHIDESTER & ASSOCIATES

Mr. Asaf Orr

October 6, 2011

Page 2

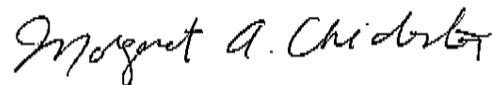
On April 30, 2004, the California Department of Education issued a legal advisory citing Education Code section 231 and stating, "That statute clearly balances the gender self-perceptions of particular students against the privacy and perceptions of other students and sets a reasonable limit on 'transgender' rights."

The District respectfully declines your request for Student to be allowed to share a cabin which provides shared toilet, bathing, and sleeping accommodations with seventh grade male students at the _____ Science Camp.

Education Code section 231 clearly allows the District to maintain separate toilet, locker room and living facilities at the _____ Science Camp for male and female students.

As previously communicated to your clients, the District has made arrangements for Student to share an on-site private cabin with his father. The District continues to offer to provide Student with these comparable toilet, bathing, and sleeping facilities. The District supports the rights of Student and all AUSD students to participate fully in the educational process.

Very truly yours,



Margaret A. Chidester

MAC:dg

cc: Dr. Joel Shawn
Superintendent
Arcadia Unified School District

Dr. Robert Leri
Deputy Superintendent
Educational Services and Programs
Arcadia Unified School District

Exhibit B

Redacted in Full to Protect
Student's Privacy

Exhibit C

Redacted in Full to Protect
Student's Privacy