



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

July 24, 2013

Asaf Orr, Esq.
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102

(In reply, please refer to DOJ Case No. DJ 169-12C-70, OCR Case No. 09-12-1020)

Dear Mr. Orr:

In October 2011, the U.S. Department of Justice, Civil Rights Division (DOJ) and the U.S. Department of Education, Office for Civil Rights (OCR) received separate complaints from you against the Arcadia Unified School District (the "District"). Your complaints alleged sex-based discrimination against a middle school student in the District (the "Student"). The complaints, filed pursuant to Title IX of the Education Amendments of 1972, 42 U.S.C. 1681 (Title IX) and its implementing regulations and Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c *et seq.* (Title IV), alleged that the District was discriminating against the Student based on sex by denying him equal access to the District's education program and activities because he is transgender.¹ Specifically, the complaints alleged that the District prohibited the Student from accessing facilities consistent with his male gender identity, including restrooms and locker rooms at school, as well as sex-specific overnight accommodations at a school-sponsored trip to an off-site academic camp in October 2011. DOJ and OCR (collectively, the "United States") jointly investigated the allegations.

Prior to the conclusion of the investigation, the District expressed an interest in voluntarily resolving this case and entered into a resolution agreement that commits the District to take specific actions. This letter summarizes the information gathered during the investigation and how the complaints were resolved.²

Title IX and its implementing regulations, 34 C.F.R. § 106.31, prohibit discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance. Title IV prohibits discrimination by public schools against students based on race, color, national origin, sex, and religion. OCR investigated its complaint under its Title IX authority. DOJ investigated its complaint under its Title IV authority. The District is a public

¹ A transgender person has a gender identity (one's internal sense of gender) that is different from the individual's assigned sex (i.e., the gender designation listed on one's original birth certificate).

² Certain personally identifiable information gathered during this investigation has been omitted from this letter to protect the Student's privacy.

school district that receives federal funds, and therefore is subject to the requirements of both Title IX and Title IV. In the context of this investigation, the United States applied the same legal standards under Title IX and Title IV.

School districts are responsible for providing students with a nondiscriminatory educational environment. Under Title IX, “[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). Under the Title IX regulations, a school district may not treat individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides. 34 C.F.R. §§ 106.31(a)-(b). All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX and Title IV.³

Summary of Investigation

The Student, a rising ninth grader in the District, has attended school in the District since Kindergarten. The Student was a seventh grader at a middle school in the District at the time of the complaints. The Student, who was assigned the female sex at birth, identified as a boy from a very young age. With his family’s support, he began consistently to assert his male gender identity and commenced a gender transition from female to male during his fifth grade year, the 2009-2010 school year, while attending an elementary school in the District.⁴

During that school year, the Student participated in a District-sponsored overnight academic camp trip for fifth graders, where he was assigned to a girls’ cabin. At the camp, the Student was teased and socially ostracized by his female cabin-mates, who did not perceive him to be a girl. At school, he faced some harassment from classmates because of his masculine clothing and hairstyle, which did not conform to female stereotypes. For example, on one occasion, a classmate referred to him as “it.” Based on these incidents, the Student and his family decided to commence his gender transition over spring break of that year. To effectuate his transition, the Student, among other things, adopted a new, traditionally male first name;

³ See, e.g., *Pratt v. Indian River Cent. Sch. Dist.*, No. 7:09-CV-0411, 2011 WL 1204804, at *11 (N.D.N.Y. Mar. 29, 2011); *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008); *Montgomery v. Independent Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1090 (D. Minn. 2000); Letter of Findings, Tehachapi Unified School District, OCR Case No. 09-11-1031, DOJ Case No. DJ 169-11E-38, at 2 (June 30, 2011), available at <http://www.justice.gov/crt/about/edu/documents/tehachapiagreement.pdf>. In the employment context, federal courts and administrative agencies have applied Title VII of the Civil Rights Act of 1964, the federal law prohibiting sex discrimination, to discrimination against transgender individuals based on sex, including nonconformity with sex stereotypes and gender identity. See, e.g., *Glenn v. Brumby*, 663 F.3d 1312, 1315-20 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Schroer v. Billington*, 577 F. Supp. 2d 293, 303-08 (D.D.C. 2008); *Macy v. Holder*, Appeal No. 0120120821, 2012 WL 1435995, at *4-11 (U.S. Equal Emp’t Opportunity Comm’n Apr. 20, 2012). Courts rely on Title VII precedent to analyze discrimination “on the basis of sex” under Title IX. See, e.g., *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 74 (1992); *Murray v. N.Y. Univ. Coll. of Dentistry*, 57 F.3d 243, 249 (2nd Cir. 1995).

⁴ A gender transition is the experience by which a transgender person goes from living and identifying as one’s assigned sex to living and identifying as the sex consistent with one’s gender identity. A gender transition often includes a “social transition,” during which an individual begins to live and identify as the sex consistent with the individual’s gender identity, with or without certain medical treatments or procedures.

expressed a desire to be referred to with masculine pronouns; and continued outwardly to present as a male, including in his clothing and hairstyle. The Student's parents worked with his teacher and school administrators to ensure a smooth transition. According to the District and the Student's family, the Student's classmates, notified of the transition by their teacher, accepted him as male immediately, and the harassment of the Student ceased. With the consent of the Student's parents and the school, the Student used a gender-neutral restroom for the remainder of his fifth grade year.

The Student completed elementary school without further incident and has not experienced any peer harassment while in middle school. He has consistently and uniformly identified and presented as male in school and all other aspects of his life, including through his traditionally masculine clothing and hairstyle, adoption of a male name, and preference to be called by masculine pronouns. All of the witnesses interviewed by OCR consistently indicated that the Student is accepted and treated as a boy by his classmates and teachers. Although some students know his transgender status (including students with whom he went to elementary school), a number of his current middle school classmates do not. As part of his transition, the Student is under the care of healthcare professionals.

In October 2011, DOJ and OCR received complaints alleging that: (1) the District prohibited the Student from using sex-specific restroom and locker room facilities designated for boys during his sixth and seventh grade years, and (2) the District refused to permit the Student to stay in a cabin with other male students at an overnight camp sponsored by the District in October 2011 during his seventh grade year, requiring instead that he stay in a cabin separate from all of his classmates with his parent or another adult chaperone. After receiving the complaints, DOJ and OCR jointly pursued an investigation of these allegations. The investigation included site visits by OCR staff to the District schools attended by the Student and the overnight camp site; interviews with District administrators and faculty, camp administrators, the Student and his family, parents of some of the Student's classmates, California Department of Education ("CDE") officials, administrators in other California school districts with policies addressing transgender and gender nonconforming students, and other gender identity experts; and a review of documentation provided by the Student's family and the District.

1. Access to Restrooms and Locker Rooms

The student entered the sixth grade at his middle school in the 2010-2011 school year. Prior to the start of that school year, the Student's parents met with middle school and District administrators to discuss the Student's transgender status. During this meeting, the Student and his parents requested that the District permit the Student to use male-designated restrooms and locker rooms at the middle school, in accordance with the Student's and family's wishes, as informed by medically appropriate standards of care recommended by the Student's healthcare providers.⁵ Citing generalized concerns about safety and privacy, the District refused this request, requiring instead that the Student use the private restroom in the school health office as

⁵ At various points, including prior to the seventh grade camp trip, the Student's parents provided the District information, including from his healthcare providers, that the medically-appropriate standard of care for a transgender adolescent is for the young person to be supported in their social transition to his or her self-identified gender, and that schools should therefore treat a transgender student as the gender consistent with his or her gender identity in all settings, including routine activities and access to sex-specific facilities.

both a restroom and changing area for physical education (P.E.) class. The health office is located on the first floor of the school, some distance away from the school gym and the location of the Student's sixth grade classes. The Student's parents agreed to this arrangement because, at the time, they remained unsure of the best arrangements for their son. Nevertheless, over the course of his sixth grade year, the Student became increasingly unhappy with the arrangement because it made him feel "different" and called unwanted attention to his situation with other classmates. Based on these problems, in summer 2011 following completion of the Student's sixth grade year, the parents renewed their request that the Student be permitted to use the male-designated facilities in the seventh grade. The District refused to reconsider the earlier arrangement.

In both sixth grade and seventh grade, the Student regularly missed class time in both P.E. and other subjects because of the distance of the health office from the gym and his classrooms. For P.E., all students are required to change clothes before and after P.E. In sixth grade, the Student was dismissed early from the class preceding P.E. to ensure that he had adequate time to change his clothes. His sixth grade P.E. teacher sometimes dismissed him early in order to give him time to change out of his gym clothes. On several occasions, the Student's P.E. teacher instructed the students who were in the locker room not to change into their gym clothes; because the Student was not in the locker room, the Student did not receive this instruction and was the only student to come to class in his gym clothes, calling further unwanted attention to him. Because he was required to store his gym clothes in a bin under the cot used by students who were not feeling well, when retrieving his gym clothes the Student sometimes faced questions from other students in the health office. The restroom arrangement created similar difficulties. To use the restroom during class time, the Student was required to walk across campus, missing class time and facing questions from classmates about the length of time he was away. The Student occasionally found the health office locked, requiring him to find an employee to unlock it for him. Similar difficulties occurred on other occasions, such as during an evening dance, when the Student was unwilling to ask for special permission to leave the dance area and look for an employee to unlock the health office for him. Eventually, the Student avoided using the restroom altogether.

There is no dispute the District treated the student differently than other students because of his gender identity. During the investigation, the District advised the United States, as it had the Student and his parents, that its decision to restrict the Student's access to all student restrooms and locker rooms was motivated by concerns related to the safety and privacy of the Student and other students. In November 2011, OCR toured school facilities, including the male-designated restrooms and locker rooms, as well as the health office facility that the Student was required to use for a restroom and changing area. OCR observed that the boys' locker room had non-functional showers and private changing areas. Witnesses, including the Student's P.E. teacher, the school's former principal, the vice-principal, the complainants, and other parents consistently stated that students did not fully disrobe when changing for P.E. Additionally, the District's superintendent and deputy superintendent, the school principal, former principal and vice-principal, the Student's guidance counselor, and seven teachers, including the Student's P.E. teacher, consistently reported that the middle school has an excellent safety record, and that there were no known instances of peer-on-peer harassment in the restrooms, locker rooms, or elsewhere in the school, including any involving the Student. During the investigation, OCR also interviewed the director of a summer camp that the Student attended the summer before

sixth grade, which was housed in his middle school building, during which he used male-designated facilities at the school with the camp's knowledge and without incident.

Despite these facts, District officials acknowledged that, at the time of the complaints, they had not considered any reasonable alternative arrangements for the Student's use of restroom and changing facilities that would have been less burdensome on the Student.

2. Access to Field Trip Accommodations

In October 2011, the District sponsored an overnight trip for all seventh graders to an academic camp at a private outdoor educational camp facility in California. The facility has cabins as sleeping accommodations. The academic camp trip is considered by students to be a highlight of the seventh grade year, in part because it is the first overnight school-sponsored trip without parent chaperones. In August 2011, the Student's parents contacted the District to request that the Student be allowed to stay in a cabin with male peers at the camp. The District refused the parent's request, requiring as a condition of the Student's participation in the trip that he stay in a private cabin on his own, separate from all of his classmates and chaperoned by his parent or a District administrator.

Before the trip, all students, including the Student, were permitted to submit a list of classmates with whom they wished to share a cabin. Several of the Student's male friends, including boys who were aware of his transgender status, requested the Student as a cabin-mate. The Student submitted a request listing these classmates as well. The District did not permit him to stay in a cabin with these students. The Student became very upset by the District's decision to require him to stay in his own cabin and became very distracted from his school work. Until several days before the camp, the Student considered not participating in the trip at all. At this time, the family filed the complaints with OCR and DOJ.

After receiving the complaints and reviewing supporting documentation provided by the Student's attorney, OCR and DOJ separately contacted the District by telephone regarding its plans for the Student for the rapidly approaching camp trip. During those calls, the District confirmed its plan for the Student to stay in his own cabin with his parent and indicated that it would not change the plan prior to the camp. As with the facilities at school, the District referenced generalized safety and privacy concerns in prohibiting the Student from staying in a cabin with other students. The District also referenced advice provided by CDE and camp staff in support of their decisions.

The Student stayed in a separate cabin with his parent. At the camp, the Student was permitted to participate in camp activities with a group of boys from another cabin, but did not enter any student cabin during break periods or free time because he did not want to violate the District's rules and no one had told him that it was acceptable to do so.⁶ As a result, he was sad and upset throughout the trip. The Student faced questions from other students about his cabin arrangement. Because the Student was not comfortable being truthful about his circumstances, the Student felt that this dishonesty created a distance between him and his peers.

⁶ The Student's parent stated that a counselor of the boys' cabin had invited the Student to enter the cabin during break periods or free time, but that the Student did not feel comfortable absent explicit permission from the District.

In November 2011, OCR also visited the private camp facility and interviewed camp administrators. The toilet, sink, and shower areas were all separate, single-stall, individually-locking rooms, such that no student would shower, use the restroom, or be required to change in front of other students. The camp administrators stated that they had presented several options to the District that would have allowed the Student to stay in a cabin with his classmates, such as assigning a second adult chaperone to the Student's cabin or permitting him to lodge with a smaller number of boys who were aware of his status. However, the District acknowledged that it did not present these options to the Student or his family. The camp administrators and District confirmed that the District independently made the final decision to require the Student to stay in a separate cabin with his parent. The District also stated that it sought advice on the camp accommodations from CDE, and that CDE agreed that the separate cabin was an acceptable arrangement for the Student. However, CDE staff told OCR and DOJ that the District provided limited information regarding the camp and the Student's circumstances, and that they were not informed that the Student was well-accepted by his peers, some of whom had requested him as a cabin-mate, or that the camp administrators offered alternative sleeping accommodations.

In February 2012, during the pendency of the United States' investigation and as a result of a change in state law, the Student's parents obtained an identification document for the Student reflecting the Student's male gender; they provided this document to the District. Subsequently, the District began permitting the Student to use the boys' restrooms and locker rooms at the middle school in April 2012. Since that time, the Student has used the male-designated facilities without experiencing any harassment and the District has indicated that there have been no incidents related to the Student's use of those facilities. Although since April 2012 the District has permitted the Student to use the male-designated facilities, it has not developed any policies or procedures addressing the treatment of transgender students.

In January 2013, you notified the United States of the family's continuing questions and concerns about the permanence of the existing arrangements, particularly in light of the Student's impending matriculation at the District's high school.

On April 23, 2013, the United States shared with the District concerns about the District's response to the family's request that the Student be permitted access to sex-specific facilities prior to 2012, including that the District had not considered reasonable alternatives that would have been less burdensome on the Student during his sixth and seventh grade years. Additionally, the United States shared concerns about the District's unwillingness to recognize the Student's consistent and uniform gender presentation in the absence of an identification document. The United States also conveyed the family's concern about future arrangements to the District. Lastly, the United States shared with the District, and the District affirmed, that its investigation had not revealed safety or privacy issues for the Student or other students at the time of the complaints.

Voluntary Resolution Agreement

The District, without admitting any violation of federal law, voluntarily agreed to enter into the attached Resolution Agreement with the United States to resolve the complaints. The Resolution Agreement memorializes the District's previous decisions to permit the Student to use male-designated facilities at school and on school-sponsored trips and to otherwise treat the Student as a boy in all respects. The District has also agreed to take other actions to ensure that the District continues to treat all students, including the Student and other transgender students, in a nondiscriminatory manner, including by amending its policies and procedures, training staff, and ensuring appropriate supports for the Student and other transgender students who request it.

Conclusion

The United States has determined that, once implemented, the Resolution Agreement will resolve the issues in this complaint. Therefore, the United States is closing this complaint as of the date of this letter. The United States will monitor the implementation of the enclosed Resolution Agreement and may reopen the investigation if the District does not comply with the Agreement. The United States is notifying the District of the closure of this complaint concurrently. This concludes the United States' investigation of this complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

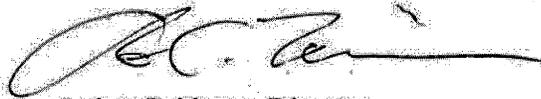
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If you have any questions regarding this letter, please contact DOJ attorneys Whitney M. Pellegrino or Joseph J. Wardenski at (202) 514-4092, or OCR attorneys Zachary Pelchat, Suzanne Taylor, or Kendra Fox-Davis at (415) 486-5555.

Sincerely,



Anurima Bhargava, Chief
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section



Arthur Zeidman, Director
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Encl.