



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

August 26, 2015

Aaron Potenza  
Bullying Resource Center Organizer  
Garden State Equality  
40 S. Fullerton Ave.  
Montclair, NJ 07042

Dear Mr. Potenza:

Thank you for writing to the U.S. Department of Education's Office for Civil Rights (OCR) inquiring as to how a school should address transgender students' privacy.

As you know, part of OCR's mission is to enforce Title IX of the Education Amendments of 1972, which prohibits recipients of Federal financial assistance from discriminating on the basis of sex. This prohibition encompasses discrimination based on gender identity, including discrimination because a student is transgender.<sup>1</sup> OCR enforces and interprets Title IX consistent with case law,<sup>2</sup> and with the adjudications and guidance documents of other Federal agencies.<sup>3</sup> One way a school can ensure compliance with Title IX with respect to transgender students is to avoid separating or otherwise distinguishing among students based on their sex. To the extent that a school separates or treats students differently based on their sex within the

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<sup>1</sup> See OCR's Questions and Answers on Title IX and Sexual Violence (April 2014) at B-2, [www.ed.gov/ocr/docs/qa-201404-title-ix.pdf](http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf).

<sup>2</sup> See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008).

<sup>3</sup> See, e.g., U.S. Dep't of Labor, *Directive: Job Corps Program Instruction Notice No. 14-31* (May 1, 2015) (Job Corps Directive), [https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi\\_14\\_31.pdf](https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf); U.S. Dep't of Justice, Memorandum from the Attorney General regarding the Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (Dec. 15, 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); U.S. Dep't of Labor, Office of Federal Contract Compliance Programs, *Gender Identity and Sex Discrimination*, Directive 2014-02 (Aug. 14, 2014), [www.dol.gov/ofccp/regs/compliance/directives/dir2014\\_02.html](http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html).

limited exceptions permitted by Title IX, it generally must treat students consistent with their gender identity.<sup>4</sup>

OCR refrains from offering opinions about specific facts, circumstances, or compliance with federal civil rights laws without first conducting an investigation. Nevertheless, it may be useful to be aware that in response to OCR's recent investigations of two complaints of gender-identity discrimination, school districts have agreed to revise policies to make clear that transgender students should be treated consistent with their gender identity. For examples of how OCR enforces Title IX in this area, please review the following resolutions of OCR investigations involving transgender students: Arcadia Unified School District<sup>5</sup> and Downey Unified School District.<sup>6</sup>

Some state education agencies and school districts have developed comprehensive policies for supporting transgender students. For example, following OCR's resolution of its investigation of Arcadia Unified School District, that district adopted a policy that directs school personnel to be mindful of the confidentiality and privacy rights of students when communicating with others, so as not to reveal, imply, or refer to a student's gender identity or expression.<sup>7</sup>

OCR is committed to helping all students thrive at school and ensuring that schools take action to prevent and respond promptly and effectively to all forms of discrimination, including gender-identity discrimination. In responding to correspondence, OCR provides customers with general, publicly available information about a wide variety of civil rights issues in the education context. OCR does not, however, provide legal or other advice or issue advisory opinions to customers concerning specific factual scenarios. Correspondence issued by OCR in response to an inquiry from the public does not constitute a formal statement of OCR policy and should not be construed as creating or articulating new policy. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

OCR staff is also available to offer schools technical assistance on how to comply with Title IX and ensure all students, including transgender students, have equal access to safe learning environments. If you have questions, want additional information or technical assistance, or wish to file a complaint against a school that you believe is engaging in unlawful sex discrimination,

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<sup>4</sup> See, e.g., OCR's Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities (December 2014) at Q. 31, [www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf](http://www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf).

<sup>5</sup> OCR Case No. 09-12-1020 (July 24, 2013), [www.justice.gov/crt/about/edu/documents/arcadialetter.pdf](http://www.justice.gov/crt/about/edu/documents/arcadialetter.pdf) (resolution letter); and [www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf](http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf) (resolution agreement).

<sup>6</sup> OCR Case No. 09-12-1095 (October 14, 2014), [www.ed.gov/documents/press-releases/downey-school-district-letter.pdf](http://www.ed.gov/documents/press-releases/downey-school-district-letter.pdf) (resolution letter); and [www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf](http://www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf) (resolution agreement).

<sup>7</sup> Arcadia Unified School District, *Transgender Students - Ensuring Equity and Nondiscrimination* (2015), [site.ausd.net/modules/groups/homepagefiles/cms/1414168/File/Transgender%20Policy%20Bulletin%20-%20Approved%20w%20corrections%20-%20April%202015.pdf?sessionid=d2c20ea677ba95737fcdd413e27ce069](http://site.ausd.net/modules/groups/homepagefiles/cms/1414168/File/Transgender%20Policy%20Bulletin%20-%20Approved%20w%20corrections%20-%20April%202015.pdf?sessionid=d2c20ea677ba95737fcdd413e27ce069).

you may visit OCR's website at [www.ed.gov/ocr](http://www.ed.gov/ocr) or contact OCR at (800) 421-3481 (TDD: 800-877-8339) or at [ocr@ed.gov](mailto:ocr@ed.gov).

I hope that this information is helpful and thank you for contacting OCR.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph W. Wheeler". The signature is fluid and cursive, with the first name "Joseph" being the most prominent.

Joseph W. Wheeler  
Staff Attorney