

ARCHIVED INFORMATION



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, DC 20202

October 31, 2014

The Honorable Peter J. Roskam
227 Cannon House Office Building
Washington, DC 20515

Dear Representative Roskam:

Thank you for your letter to Secretary Duncan, dated October 7, 2014, in which you asked for an explanation of the Department's legal authority to address gender-identity discrimination under Title IX of the Education Amendments of 1972 as well as the Department's plans to enforce Title IX to protect students from such discrimination. Your letter has been forwarded to the Department's Office for Civil Rights (OCR) and I am pleased to respond on Secretary Duncan's behalf.

OCR enforces Title IX, which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance from the Department and authorizes OCR to effectuate that prohibition. As your letter notes, OCR recently issued guidance making clear that all students, including transgender and gender-nonconforming students, are protected from sex-based discrimination under Title IX and that Title IX's prohibition on sex discrimination extends to discrimination based on gender identity or failure to conform to stereotypical notions of masculinity and femininity. OCR's interpretation of Title IX is consistent with interpretations of various other Federal statutory prohibitions against sex discrimination as established by precedents of the Supreme Court and other Federal courts,¹ as well as the adjudications and guidances of other Federal agencies.²

¹ See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (holding that Title VII of the Civil Rights Act of 1964's prohibition on sex discrimination bars discrimination based on gender stereotyping, that is "insisting that [individuals] matched the stereotype associated with their group"); *Barnes v. City of Cincinnati*, 401 F.3d 729, 736-39 (6th Cir. 2005) (holding that demotion of transgender police officer because he did not "conform to sex stereotypes concerning how a man should look and behave" stated a claim of sex discrimination under Title VII); *Smith v. City of Salem*, 378 F.3d 566, 574-75 (6th Cir. 2004) ("[D]iscrimination against a plaintiff who is a transsexual—and therefore fails to act and/or identify with his or her gender—is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*, who, in sex-stereotypical terms, did not act like a woman."); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000) (applying *Price Waterhouse* to conclude, under the Equal Credit Opportunity Act, that plaintiff states a claim for sex discrimination if bank's refusal to provide a loan application was because plaintiff's "traditionally feminine attire.... did not accord with his male gender"); *Schwenk v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000) (holding that discrimination against transgender females—i.e., "as anatomical males whose outward behavior and inward identity [do] not meet social definitions of masculinity"—is actionable discrimination "because of sex" under the Gender Motivated Violence Act").

² See, e.g., *Macy v. Holder*, Appeal No. 012012082 (U.S. Equal Emp't Opportunity Comm'n Apr. 20, 2012) (holding that gender identity and transgender status did not need to be specifically addressed in Title VII in order to be prohibited bases of discrimination, as they are simply part of the protected category of "sex"),

You also indicated that schools have expressed interest in receiving additional information regarding how they can comply with Title IX's prohibition against gender-identity discrimination. The Department's Title IX regulations permit schools to provide sex-segregated restrooms, locker rooms, shower facilities, housing, athletic teams, and single-sex classes under certain circumstances. When a school elects to separate or treat students differently on the basis of sex in those situations, a school generally must treat transgender students consistent with their gender identity. OCR also encourages schools to offer the use of gender-neutral, individual-user facilities to all students who do not want to use shared sex-segregated facilities.

For examples of how OCR enforces Title IX in this area, please see the following two recent resolutions of OCR investigations involving transgender students:

- Letter of Findings in OCR Case No. 09-12-1020, Arcadia Unified School District (CA) (July 24, 2013), available at <http://www.justice.gov/crt/about/edu/documents/arcadialetter.pdf>
- Letter of Findings in OCR Case No. 09-12-1095, Downey Unified School District (CA) (October 14, 2014), available at <http://www2.ed.gov/documents/press-releases/downey-school-district-letter.pdf>

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. 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.

Thank you again for writing. I hope this information is helpful.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights

<http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>; U.S. Dept. of Health & Human Services, Office for Civil Rights, *Letter to Maya Rupert, Esq.*, Transaction No. 12-0008000 (July 12, 2012) (stating that Section 1557 of the Affordable Care Act, which incorporates Title IX's prohibition on sex discrimination, "extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity"), <http://www.scribd.com/doc/101981113/Response-on-LGBT-People-in-Sec-1557-in-the-Affordable-Care-Act-from-the-U-S-Dept-of-Health-and-Human-Services>; U.S. Dep't of Labor, Office of Federal Contract Compliance Programs, *Gender Identity and Sex Discrimination*, Directive 2014-02 (Aug. 14, 2014) (directing that for purposes of Executive Order 11246, which prohibits employment discrimination on the basis of sex by federal contractors and subcontractors, "discrimination based on gender identity or transgender status ... is discrimination based on sex"), http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html.