March 26, 2020

The Honorable Suzanne Bonamici
Chairwoman
Subcommittee on Civil Rights and Human Services
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Bonamici:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.


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These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”4 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

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In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.6 ED has made clear that where students, including transgender students, are penalized or harassed for failing to

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5 Id.
conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—it’s commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

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**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

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**Answer 6:** No.

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**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit...
discrimination based on gender identity, per se.\textsuperscript{8} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{9}

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

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U.S. House of Representatives  
Washington, DC 20515

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\(^{15}\) \textit{Id.}

\(^{16}\) See OCR’s \textit{Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties} at 3 (Jan. 19, 2001), \url{https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf}. 
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Kenneth L. Marcus
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**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit

\textbf{Question 9:} What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

\textbf{Answer 9:} Please refer to Answer 8.

\textbf{Question 10:} What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

\textbf{Answer 10:} The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\footnote{See Comment submitted by the Family Research Council, https://www.regulations.gov/document?D=ED-2018-OCR-0064-10499; see also Comment submitted by Alliance Defending Freedom, https://www.regulations.gov/document?D=ED-2018-OCR-0064-32712.}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

\begin{flushright}
Sincerely,
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\begin{flushright}
Kenneth L. Marcus
Assistant Secretary for Civil Rights
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Enclosure
March 26, 2020

The Honorable Pramila Jayapal  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Jayapal:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.33

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”34 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”35

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.36 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

34 February 2017 DCL at 1, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.
35 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy

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37 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

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**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, *per se.* Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.  

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

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March 26, 2020

The Honorable Jahana Hayes
U.S. House of Representatives
Washington, DC 20515

Dear Representative Hayes:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.46 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

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Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

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**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM).47 As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

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Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Andy Levin  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Levin:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

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organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

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**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

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discrimination based on gender identity, *per se*.\(^{58}\) Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘sex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\(^{59}\)

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In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

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March 26, 2020

The Honorable Alan Lowenthal
U.S. House of Representatives
Washington, DC 20515

Dear Representative Lowenthal:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.63

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”64 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

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In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.66 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

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64 February 2017 DCL at 1, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.
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Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

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Sincerely,

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Assistant Secretary for Civil Rights

Enclosure

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March 26, 2020

The Honorable Ro Khanna
U.S. House of Representatives
Washington, DC 20515

Dear Representative Khanna:

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Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

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March 26, 2020

The Honorable Chris Pappas  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Pappas:

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84 February 2017 DCL at 1, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.
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**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy

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organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

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**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

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**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, \textit{per se}.^{88} Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.^{89}

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**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.^{90}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

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March 26, 2020

The Honorable Ann McLane Kuster
U.S. House of Representatives
Washington, DC 20515

Dear Representative Kuster:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

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Assistant Secretary for Civil Rights

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March 26, 2020

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Washington, DC 20515

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**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.110

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

March 26, 2020

The Honorable Seth Moulton  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Moulton:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.113

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”114 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”115

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.116 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

115 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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117 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, *per se.*\(^{118}\) Noting that the statute does not reference gender identity specifically, DOJ noted that, “*[s]ex is ordinarily defined to mean male or female.*” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\(^{119}\)

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

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**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus  
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Jennifer Wexton
U.S. House of Representatives
Washington, DC 20515

Dear Representative Wexton:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

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Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal nondiscrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.123

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”124 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”125

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.126 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

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Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

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**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

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- a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.
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**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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127 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

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discrimination based on gender identity, per se.\textsuperscript{128} Noting that the statute does not reference gender identity specifically, DOJ noted that, “’[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{129}

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Joseph D. Morelle
U.S. House of Representatives
Washington, DC 20515

Dear Representative Morelle:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.133

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Question 1: What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

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Question 2: In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

Answer 2: Please refer to Answer 1.

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a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

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Answer 3b: Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se. Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

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March 26, 2020

The Honorable Mark Pocan  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Pocan:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-


discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal nondiscrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.143

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”144 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”145

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.146 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

144 February 2017 DCL at 1, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.
145 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM).\(^{147}\) As referenced above, OCR has repeatedly stated—including to its staff—it’s commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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\(^{147}\) See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.\textsuperscript{148} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{149}

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\textsuperscript{150}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Salud O. Carbajal  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Carbajal:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.\textsuperscript{153}

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”\textsuperscript{154} Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”\textsuperscript{155}

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation 	extit{per se}, Title IX covers sex discrimination more broadly directed at LGBTQ students.\textsuperscript{156} ED has made clear that where students, including transgender students, are penalized or harassed for failing to


\textsuperscript{154} February 2017 DCL at 1, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.

\textsuperscript{155} Id.

\textsuperscript{156} See OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties at 3 (Jan. 19, 2001), https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf.
conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM) \(^{157}\). As referenced above, OCR has repeatedly stated—including to its staff—it’s commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

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**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

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**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

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**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se. Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.

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In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

March 26, 2020

The Honorable Darren Soto  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Soto:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.\textsuperscript{163}

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”\textsuperscript{164} Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”\textsuperscript{165}

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.\textsuperscript{166} ED has made clear that where students, including transgender students, are penalized or harassed for failing to


\textsuperscript{164} February 2017 DCL at 1, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.

\textsuperscript{165} Id.

\textsuperscript{166} See OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties at 3 (Jan. 19, 2001), https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf.
conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

- Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.
- Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

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167 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
Answer 3b: Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

Question 4: Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

Answer 4: OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

Question 5: The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

Answer 5: OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

Question 6: In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

Answer 6: No.

Question 7: Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

Answer 7: OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

Question 8: What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

Answer 8: As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, *per se.* Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\(^\text{169}\)

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\(^\text{170}\)

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Angie Craig  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Craig:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.\(^{173}\)

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”\(^{174}\) Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”\(^{175}\)

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation \textit{per se}, Title IX covers sex discrimination more broadly directed at LGBTQ students.\(^{176}\) ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.


\(^{175}\) Id.

\(^{176}\) See OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties at 3 (Jan. 19, 2001), https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

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**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

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**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

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**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

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discrimination based on gender identity, per se.\textsuperscript{178} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{179}

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

[Signature]

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Adriano Espaillat
U.S. House of Representatives
Washington, DC 20515

Dear Representative Espaillat:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

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In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.186 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

185 Id.
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In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Kathy Castor  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Castor:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.193

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”194 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”195

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.196 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

195 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM).197 As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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197 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se. Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus  
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Lucille Roybal-Allard  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Roybal-Allard:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

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Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.  

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.” Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students. ED has made clear that where students, including transgender students, are penalized or harassed for failing to

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204 February 2017 DCL at 1, [https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf).

205 Id.

206 See OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties at 3 (Jan. 19, 2001), [https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf).
conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

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207 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.\textsuperscript{208} Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{209}

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\textsuperscript{210}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus  
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Sheila Jackson Lee  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Jackson Lee:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

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Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal nondiscrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders. \(^{213}\)

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”\(^{214}\) Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”\(^{215}\)

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.\(^{216}\) ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

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\(^{214}\) February 2017 DCL at 1, [https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf).

\(^{215}\) Id.

\(^{216}\) See OCR’s [Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties](https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf) at 3 (Jan. 19, 2001).
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**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

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**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

Question 4: Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

Answer 4: OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

Question 5: The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

Answer 5: OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

Question 6: In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

Answer 6: No.

Question 7: Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

Answer 7: OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

Question 8: What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

Answer 8: As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.218 Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.219

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.220

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Eleanor Holmes Norton  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Norton:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

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Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders. \(^{223}\)

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.” \(^{224}\) Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.” \(^{225}\)

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students. \(^{226}\) ED has made clear that where students, including transgender students, are penalized or harassed for failing to


\(^{224}\) February 2017 DCL at 1, [https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf).

\(^{225}\) Id.

\(^{226}\) See OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties at 3 (Jan. 19, 2001), [https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf).
conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

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227 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

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**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, *per se.* Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

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March 26, 2020

The Honorable Peter A. DeFazio
U.S. House of Representatives
Washington, DC 20515

Dear Representative DeFazio:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-


discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.233

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”234 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

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In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.236 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

235 Id.
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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

[signature]

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure
March 26, 2020

The Honorable Frank Pallone, Jr.
U.S. House of Representatives
Washington, DC 20515

Dear Representative Pallone:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal nondiscrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.  

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In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students. ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

244 February 2017 DCL at 1, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.
245 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

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**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.\textsuperscript{248} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{249}

\textbf{Question 9:} What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

\textbf{Answer 9:} Please refer to Answer 8.

\textbf{Question 10:} What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

\textbf{Answer 10:} The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\textsuperscript{250}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

\textit{Sincerely,}

\begin{center}
Kenneth L. Marcus
Assistant Secretary for Civil Rights
\end{center}

\textit{Enclosure


March 26, 2020

The Honorable Albio Sires  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Sires:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.253

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”254 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy."

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In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.256 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

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Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

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**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM).²⁵⁷ As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

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**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

²⁵⁷ *See* Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
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Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Adam B. Schiff
U.S. House of Representatives
Washington, DC 20515

Dear Representative Schiff:

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Sincerely,

[Signature]

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

March 26, 2020

The Honorable Gwen Moore  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Moore:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.\(^\text{273}\)

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”\(^\text{274}\) Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”\(^\text{275}\)

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.\(^\text{276}\) ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.


\(^{274}\) February 2017 DCL at 1, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.

\(^{275}\) Id.

\(^{276}\) See OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties at 3 (Jan. 19, 2001), https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1**: What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1**: All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2**: In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2**: Please refer to Answer 1.

**Question 3**: Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

**a.** Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

**b.** Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a**: OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b**: Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.\textsuperscript{278} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{279}

\textbf{Question 9}: What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

\textbf{Answer 9}: Please refer to Answer 8.

\textbf{Question 10}: What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

\textbf{Answer 10}: The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\textsuperscript{280}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

\textbf{Sincerely,}

\begin{flushright}
Kenneth L. Marcus  
Assistant Secretary for Civil Rights
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\textbf{Enclosure}


March 26, 2020

The Honorable Suzan K. DelBene
U.S. House of Representatives
Washington, DC 20515

Dear Representative DelBene:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.283

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”284 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”285

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.286 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

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285 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM).\(^\text{287}\) As referenced above, OCR has repeatedly stated—including to its staff—it’s commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

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**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

\(^{287}\) See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

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March 26, 2020

The Honorable Jan Schakowsky  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Schakowsky:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

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**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.\textsuperscript{298} Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{299}

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\textsuperscript{300}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Linda T. Sánchez  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Sánchez:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.303

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”304 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”305

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.306 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

305 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—it's commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

Question 4: Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

Answer 4: OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

Question 5: The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

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Question 6: In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

Answer 6: No.

Question 7: Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

Answer 7: OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

Question 8: What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

Answer 8: As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.\textsuperscript{308} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{309}

\textbf{Question 9:} What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

\textbf{Answer 9:} Please refer to Answer 8.

\textbf{Question 10:} What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

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In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

\begin{center}
Sincerely,
\end{center}

\begin{center}
Kenneth L. Marcus
Assistant Secretary for Civil Rights
\end{center}

\textbf{Enclosure}


March 26, 2020

The Honorable Eliot L. Engel
U.S. House of Representatives
Washington, DC 20515

Dear Representative Engel:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.\textsuperscript{313}

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”\textsuperscript{314} Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”\textsuperscript{315}

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.\textsuperscript{316} ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

\textsuperscript{314} February 2017 DCL at 1, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.
\textsuperscript{315} Id.
\textsuperscript{316} See OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties at 3 (Jan. 19, 2001), https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

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**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

Question 4: Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

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Question 6: In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

Answer 6: No.

Question 7: Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

Answer 7: OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

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discrimination based on gender identity, per se. Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable William R. Keating  
U.S. House of Representatives  
Washington, DC 20515  

Dear Representative Keating:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

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Id.

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**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM).[^327] As referenced above, OCR has repeatedly stated—including to its staff—it’s commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more...

[^327]: See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf)
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

Question 4: Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

Answer 4: OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

Question 5: The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

Answer 5: OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

Question 6: In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

Answer 6: No.

Question 7: Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

Answer 7: OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

Question 8: What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

Answer 8: As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.\textsuperscript{328} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{329}

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\textsuperscript{330}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Gregory W. Meeks
U.S. House of Representatives
Washington, DC 20515

Dear Representative Meeks:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.333

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”334 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”335

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.336 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

335 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

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**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

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Question 5: The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

\[Signature\]

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure
March 26, 2020

The Honorable John B. Larson  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Larson:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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347 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
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discrimination based on gender identity, per se.\textsuperscript{348} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{349}

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Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Joseph P. Kennedy, III  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Kennedy:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

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As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”354 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

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In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.356 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.


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Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM).\(^{357}\) As referenced above, OCR has repeatedly stated—including to its staff—it’s commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

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**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se. Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.

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**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Gilbert R. Cisneros, Jr.
U.S. House of Representatives
Washington, DC 20515

Dear Representative Cisneros:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Rashida Tlaib
U.S. House of Representatives
Washington, DC 20515

Dear Representative Tlaib:

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable TJ Cox
U.S. House of Representatives
Washington, DC 20515

Dear Representative Cox:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-


discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.\(^3\)

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”\(^4\) Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”\(^5\)

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation \textit{per se}, Title IX covers sex discrimination more broadly directed at LGBTQ students.\(^6\) ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.


\(^5\) Id.

Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff— its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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387 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se. Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

March 26, 2020

The Honorable Brenda L. Lawrence  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Lawrence:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-
discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.393

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”394 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”395

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.396 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

395 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

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**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

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a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

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**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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397 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
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discrimination based on gender identity, per se. 398 Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII. 399

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Henry C. “Hank” Johnson, Jr.
U.S. House of Representatives
Washington, DC 20515

Dear Representative Johnson:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.\textsuperscript{408} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{409}

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\textsuperscript{410}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus  
Assistant Secretary for Civil Rights

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March 26, 2020

The Honorable Adam Smith  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Smith:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-


discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.  

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.” Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students. ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

415 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, *per se.*418 Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.419

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.420

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

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March 26, 2020

The Honorable Danny K. Davis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Davis:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.423

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”424 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”425

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.426 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.


425 Id.

Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

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**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

- **Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance provided to OCR staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

- **Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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427 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

[Signature]

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

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March 26, 2020

The Honorable Rick Larsen  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Larsen:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

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**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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437 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
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**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

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**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

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discrimination based on gender identity, per se.438 Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.439

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**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.440

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

March 26, 2020

The Honorable Bill Foster  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Foster:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

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These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”444 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”445

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.446 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.


445 Id.

Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

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Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

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March 26, 2020

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Representative Nadler:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Jimmy Gomez
U.S. House of Representatives
Washington, DC 20515

Dear Representative Gomez:

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As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”⁴⁶⁴ Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

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In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.⁴⁶⁶ ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

⁴⁶⁵ Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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467 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

Question 4: Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

Answer 4: OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

Question 5: The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

Answer 5: OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

Question 6: In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

Answer 6: No.

Question 7: Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

Answer 7: OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

Question 8: What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

Answer 8: As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, *per se*.\(^{468}\) Noting that the statute does not reference gender identity specifically, DOJ noted that, “[s]ex is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\(^{469}\)

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\(^{470}\)

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Alcee L. Hastings  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Hastings:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.473

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”474 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”475

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.476 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

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Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

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**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

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Sincerely,

Kenneth L. Marcus  
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Sylvia Garcia  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Garcia:

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal nondiscrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders. ⁴⁸³

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**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM).\(^{487}\) As referenced above, OCR has repeatedly stated—including to its staff—it’s commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

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In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus  
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable David N. Cicilline
U.S. House of Representatives
Washington, DC 20515

Dear Representative Cicilline:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.\(^\text{493}\)

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”\(^\text{494}\) Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”\(^\text{495}\)

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.\(^\text{496}\) ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.


\(^{494}\) February 2017 DCL at 1, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.

\(^{495}\) Id.

\(^{496}\) See OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties at 3 (Jan. 19, 2001), https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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497 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.\textsuperscript{498} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex is ordinarily defined to mean male or female.’” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{499}

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\textsuperscript{500}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Tony Cárdenas
U.S. House of Representatives
Washington, DC 20515

Dear Representative Cárdenas:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-


discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.  

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

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The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students. ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.


505 Id.

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**Answer 2:** Please refer to Answer 1.

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**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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discrimination based on gender identity, *per se*.\(^{508}\) Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\(^{509}\)

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Grace Meng  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Meng:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.513

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

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**Answer 1**: All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM).517 As referenced above, OCR has repeatedly stated—including to its staff—it’s commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

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**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, per se.518 Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.519

Question 9: What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

Answer 9: Please refer to Answer 8.

Question 10: What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

Answer 10: The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.520

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

March 26, 2020

The Honorable Dina Titus  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Titus:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-


discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal nondiscrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.523

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”524 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”525

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.526 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

525 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Daniel T. Kildee
U.S. House of Representatives
Washington, DC 20515

Dear Representative Kildee:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Derek Kilmer  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Kilmer:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM). As referenced above, OCR has repeatedly stated—including to its staff—its commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

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547 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, *per se.*

Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Chrissy Houlahan
U.S. House of Representatives
Washington, DC 20515

Dear Representative Houlahan:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

Additionally, to better serve schools, stakeholders, and the public, on January 21, 2020, Secretary DeVos announced the launch of the Outreach, Prevention, Education and Non-


discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.553

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.”554 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.”555

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.556 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

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Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

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Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Jackie Speier  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Speier:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

March 26, 2020

The Honorable Mike Thompson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Thompson:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.573

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

As ED and DOJ noted in the February 2017 DCL, the May 2016 DCL did “not contain extensive legal analysis or explain how the position [was] consistent with the express language of Title IX, nor did [it] undergo any formal public process.” 574 Additionally, the interpretation of the term “on the basis of sex” in the May 2016 DCL had “given rise to significant litigation regarding school restrooms and locker rooms . . . [and] was preliminarily enjoined by a federal district court in Texas.” Furthermore, ED and DOJ stressed that “in this context, there must be due regard for the primary role of the states and local school districts in establishing educational policy.”

The rescission of the May 2016 DCL, however, did not signal that OCR will no longer protect LGBTQ students or transgender students. Indeed, following a March 8, 2017, meeting with parents and students from the transgender community, as well as leaders from LGBTQ advocacy organizations, Secretary DeVos emphatically stated, “I remain committed to advocating for and fighting on behalf of all students. Today’s meeting was compelling, moving and welcomed, and part of an ongoing dialogue with families and students throughout the country.” 575

In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students. 576 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

575 Id.
Finally, included below are responses to the specific information requested in your letter about OCR’s policies for processing sexual orientation and gender-identity related complaints.

**Question 1:** What instructions have OCR staff received on processing complaints, particularly those related to complaints involving sexual orientation or gender identity-based discrimination? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 1:** All complaints filed with OCR are processed in accordance with OCR’s regulations and the processes and procedures outlined in the Case Processing Manual (CPM).577 As referenced above, OCR has repeatedly stated—including to its staff—it’s commitment to enforcing Title IX for all students, including LGBTQ students. A document titled “Instructions to the Field re Complaints Involving Transgender Students” was sent to OCR staff on June 6, 2017. Since that time, we have not issued written instructions to OCR staff regarding the processing of complaints involving sexual orientation or gender identity-based discrimination other than sharing a March 9, 2020, letter addressed to a Member of Congress clarifying that Title IX protects all students from harassment predicated on sex stereotyping if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from an education program or activity, but that a refusal to use transgender students’ preferred pronouns, without more, does not violate Title IX. As indicated in that letter, “to the extent any prior sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.” A copy of this letter is enclosed as a courtesy.

**Question 2:** In light of the February 22, 2017 Dear Colleague letter, what instructions have OCR staff received on processing complaints related to facilities access for transgender students? Please provide copies of any letters, emails, memos, policies, guidelines, training materials, or other formal or informal documents.

**Answer 2:** Please refer to Answer 1.

**Question 3:** Please provide documents sufficient to show how OCR prioritizes the processing of complaints of discrimination.

a. Please provide documents sufficient to show all prioritization directives, instructions, or guidance provided to OCR staff. This should include, but not be limited to, those relating to claim category prioritization and claim closure prioritization.

b. Have you asked staff to prioritize complaints filed by the Alliance Defending Freedom or the Family Research Council and, if you have, please provide documentation sufficient to show the nature of these complaints.

**Answer 3a:** OCR has not provided written prioritization directives, instructions, or guidance to staff that include the prioritization of types of claims or the prioritization of certain types of closures. OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM.

**Answer 3b:** Consistent with Answer 3a, OCR is investigating complaints filed by both the Alliance Defending Freedom and the Family Research Council. OCR is also investigating more

577 See Case Processing Manual (November 19, 2018), [https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).
than 12,000 other complaints filed by parents, individuals, stakeholder groups, and advocacy organizations. OCR will continue to vigorously enforce federal civil rights laws while also striving to meet OCR’s performance metrics pursuant to the Government Performance and Results Act; the agency will evaluate every complaint in a prompt and timely manner in accordance with the laws that it enforces and investigate complaints pursuant to the processes and procedures set forth in the CPM.

**Question 4:** Please provide documents sufficient to show whether OCR is currently investigating any complaints concerning transgender students’ access to sex-segregated facilities or programs.

**Answer 4:** OCR evaluates every complaint in accordance with the laws it enforces and investigates those complaints pursuant to the processes and procedures set forth in OCR’s CPM. OCR will investigate complaints of discrimination and harassment against all students, including transgender students, consistent with OCR’s jurisdiction under Title IX and other civil rights laws it enforces.

**Question 5:** The 6th and 7th Federal circuit courts have explicitly held that Title IX protections against sex discrimination cover discrimination based on sex stereotyping, gender nonconformity, and gender identity. Please provide documents sufficient to show how OCR processes complaints alleging discrimination based on sexual orientation or gender identity originating within these circuits.

**Answer 5:** OCR does not process complaints in the 6th and 7th Circuits differently than other Circuits. OCR enforces civil rights law consistently throughout the country, and neither the Supreme Court nor Congress has addressed the issue of whether gender identity is covered by Title IX with respect to access to intimate facilities.

**Question 6:** In the jurisdictions where a federal district court has explicitly ruled that Title IX prohibits sexual orientation and gender identity discrimination, does OCR process complaints differently than other complaints?

**Answer 6:** No.

**Question 7:** Provide documents sufficient to show what factors OCR uses to determine whether information it receives about allegations of discrimination related to sexual orientation or gender identity fall outside of its jurisdiction.

**Answer 7:** OCR relies on the statutory text of Title IX, the Title IX regulations set forth in the Code of Federal Regulations, and the decisions of the United States Supreme Court.

**Question 8:** What direction did OCR receive from the White House on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 8:** As you are no doubt aware, in a legal memorandum issued on October 4, 2017, the Department of Justice concluded that while Title VII of the Civil Rights Act of 1964 provides various protections to transgender individuals in the employment context, it does not prohibit
discrimination based on gender identity, *per se*.\textsuperscript{578} Noting that the statute does not reference gender identity specifically, DOJ noted that, “‘[s]ex’ is ordinarily defined to mean male or female.” The Equal Employment Opportunity Commission, represented by the United States Solicitor General, filed a brief in a pending Supreme Court case taking the same position regarding Title VII.\textsuperscript{579}

**Question 9:** What direction did OCR receive from the Department of Justice on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instructions, or descriptions of orally communicated directions.

**Answer 9:** Please refer to Answer 8.

**Question 10:** What recommendations, guidance, or consultation did entities opposed to LGBTQ equality such as the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council provide to OCR on interpreting Title IX as it relates to sexual orientation or gender identity? Please provide copies of any letters, memos, emails, any other written instruction, or descriptions of orally communicated directions.

**Answer 10:** The Department declines to address the characterization that any group is or is not “opposed to LGBTQ equality.” However, OCR can confirm that it has received more than 120,000 comments on its proposed Title IX regulations, some of which address the topic of sexual orientation or gender identity. Of the three entities mentioned in this question, the following submitted public comments: Family Research Council and the Alliance Defending Freedom. Those documents are publicly available at Regulations.gov.\textsuperscript{580}

In response to the second question, OCR does not accept instructions or direction from outside organizations and does not consider any previous communications with external groups to constitute “instructions” or “directions” from any of the named entities.

Thank you for your interest in ensuring that students have a safe learning environment that is free from discrimination. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

[Signature]

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


March 26, 2020

The Honorable Sharice L. Davids  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Davids:

Thank you for your October 22, 2019, letter addressed to Secretary of Education Betsy DeVos. Because your letter expressed concerns about important civil rights enforcement issues handled by the Office for Civil Rights (OCR), it was referred to me, and I am pleased to respond. An identical copy of this response has been provided to all co-signers of your letter.

Your letter encouraged OCR to work vigorously to enforce the civil rights of all students, including LGBTQ students. You also raise questions regarding OCR’s handling of complaints related to sexual orientation and gender identity and urge OCR to reinstate a May 2016 Dear Colleague Letter addressing whether Title IX of the Education Amendments of 1972 (Title IX) covers gender identity discrimination. Finally, you request specific information about OCR’s policies for processing sexual orientation and gender identity-related complaints.

During this administration, OCR has strengthened civil rights enforcement for the benefit of all students. As Secretary DeVos has said repeatedly, every student deserves a safe, nurturing, and nondiscriminatory learning environment. OCR’s enforcement record demonstrates OCR’s commitment to civil rights enforcement with faster and better results for students in OCR’s complaint investigations. OCR resolved, on average, 16,000 complaints per year for fiscal years 2017 and 2018. These figures nearly doubled the average of 8,200 complaint resolutions per year under the previous administration. Significantly, OCR achieved a 60 percent increase in the number of complaint resolutions that required schools to make changes to protect students’ civil rights. As Secretary DeVos stated, “Our approach has been more effective at supporting students and delivering meaningful results.”

OCR has taken other steps to further demonstrate its commitment to enforcing the civil rights laws within its jurisdiction. For instance, OCR has taken several actions related to the topic of restraint and seclusion of students, including steps to ensure the accuracy of the data collected in the Civil Rights Data Collection (CRDC). This effort was part of a broader initiative announced by Secretary DeVos on January 17, 2019, to address the inappropriate use of restraint and seclusion on children with disabilities.

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discrimination (OPEN) Center within OCR to focus on proactive compliance with federal civil rights laws. The OPEN Center provides assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. By investing resources in technical assistance, OCR is able to provide not only much-needed assistance to recipients, but also is able to better support students, families, and stakeholders.583

These major initiatives demonstrate OCR’s continued priorities and commitment to ensuring that all students are able to learn in a safe and nurturing environment, while also ensuring support and outreach to schools.

With regard to the specific concerns you expressed about protecting the civil rights of LGBTQ students and complaints related to sexual orientation and gender identity, OCR remains committed to protecting the civil rights of all students, including LGBTQ students. As your letter recognizes, on February 22, 2017, the Department of Education (ED) and the U.S. Department of Justice (DOJ) rescinded the statements of policy and guidance (February 2017 DCL) reflected in the May 2016 Dear Colleague Letter discussing the application of Title IX to gender identity discrimination. (May 2016 DCL).

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In view of this commitment, OCR continues to investigate complaints of discrimination and harassment against all students, including LGBTQ students, consistent with OCR’s jurisdiction under Title IX and the other civil rights laws that it enforces. OCR has repeatedly stated that Title IX protects all students from discrimination based on sex, including sex stereotyping, and that while Title IX does not prohibit discrimination on the basis of sexual orientation per se, Title IX covers sex discrimination more broadly directed at LGBTQ students.586 ED has made clear that where students, including transgender students, are penalized or harassed for failing to conform to sex-based stereotypes, these students have suffered sex discrimination prohibited by Title IX.

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Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure


