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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

December 18, 2015

Dana Bolger
Executive Director
Know Your IX
dana@knowyourIX.org

Dear Ms. Bolger:

Thank you for your October 26, 2015, letter requesting clarification regarding protections for students who are undocumented immigrants and have been subjected to discrimination under the laws OCR enforces. I am sending an identical response to the cosigners of your letter.

OCR is committed to ensuring that all students, including undocumented immigrants, have access to safe and nondiscriminatory learning environments. OCR has made clear that Title IX and other federal civil rights laws protect all students at recipient institutions in the United States regardless of national origin, immigration status, or citizenship status.¹

It is therefore important for schools to ensure that all students – including undocumented students, holders of Deferred Action for Childhood Arrivals (DACA), holders of Temporary Protected Status (TPS), holders of relief under the Violence Against Women Act (VAWA), international students, and other non-citizen students – are aware of their civil rights.

Your letter expresses concern regarding the information OCR may reveal about individuals who file complaints with our office. OCR is committed to protecting the privacy of individuals who file complaints with OCR and to complying with all applicable laws and regulations. In its complaint processing and investigations, OCR does not require complainants, witnesses, or family members to provide social security numbers. OCR solicits only information relevant to the allegations of discrimination. It is extremely rare that the citizenship or immigration status of a student or their parent(s) would be relevant in an OCR complaint, except in cases involving allegedly exclusionary school enrollment procedures, as described in the May 2014 joint OCR-

¹ See OCR's *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014) at B-4, www.ed.gov/ocr/docs/qa-201404-title-ix.pdf and OCR and the Department of Justice's, *Dear Colleague Letter: School Enrollment Procedures* (May 8, 2014), www.ed.gov/ocr/letters/colleague-201405.pdf.

Department of Justice *Dear Colleague Letter*.² OCR does not routinely share with any other federal agency information obtained in its investigations about the immigration or citizenship status of any persons.

OCR does not release to the public personally identifiable information about any private individual – complainants, witnesses, or others– when prohibited by law. OCR complies with the privacy protections of the Privacy Act of 1974 (Privacy Act) and the Freedom of Information Act (FOIA), which govern the use of personal information collected by OCR. FOIA specifically permits a Federal agency to refuse a request for records if their release could reasonably be expected to result in an unwarranted invasion of privacy of an individual. 5 U.S.C. § 552(b)(7)(c). As you note in your letter, “OCR will not reveal the name or other identifying information about an individual (including individuals who file complaints or speak to OCR) unless (1) such information would assist in the completion of an investigation or for enforcement activities against an institution that violates the laws; (2) such information is required to be disclosed under the FOIA or the Privacy Act; or (3) such information is permitted to be disclosed under both FOIA and the Privacy Act and OCR determines disclosure would further an interest of the Department and the United States.”³

Because OCR always seeks to withhold or redact materials from the public that would allow any particular individual to be identified by the public as a complainant or witness, OCR may describe a person’s immigration or citizenship status in its letters of findings or resolution agreements when relevant to the issue being investigated. For example, in addressing a complaint that students of a particular immigration status were denied an educational benefit, OCR might describe how an undocumented student was treated compared to other students. Likewise, if there were a claim of retaliation that involved a student’s immigration status, that fact would be included in a letter or agreement. But in such instances, OCR will seek to minimize the personally identifiable information in the letter in an effort to protect the identity of the individuals being discussed.

Like other federal law enforcement agencies, OCR recognizes the importance of individuals not being fearful of retaliation when they seek relief from the Federal government by filing a complaint or otherwise participating in an investigation. OCR is firmly committed to protecting all individuals – regardless of citizenship or immigration status – from retaliation. This includes threats to report a person to U.S. Immigration and Customs Enforcement (ICE) if they complain about discrimination to OCR. Schools should be aware that threatening students with deportation or otherwise invoking a student’s immigration status in an attempt to intimidate or deter a student from filing a civil rights complaint would violate Federal protections against retaliation.⁴ Persons who are aware of any such retaliatory activities are welcome to file a complaint with OCR.

²

OCR and the Department of Justice’s, *Dear Colleague Letter: School Enrollment Procedures* (May 8, 2014), www.ed.gov/ocr/letters/colleague-201405.pdf.

³ OCR’s Case Processing Manual (Feb. 2015) at 37, www.ed.gov/ocr/docs/ocrcpm.pdf.

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See OCR’s *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014) at B-4, www.ed.gov/ocr/docs/qa-201404-title-ix.pdf.

Thank you again for the work you are doing to ensure all students have access to safe learning environments, regardless of their immigration or citizenship status.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

cc'd:

Laura Bohorquez, Dream Educational Empowerment Program Coordinator
United We Dream
laura@unitedwedream.org

Cairo Mendes, Organizer
Student Immigrant Movement
cmendes@simforus.com

Matthew Matera , Executive Director & CoFounder
Scholarships AZ
matt@scholarshipsaz.org