



June 20, 2016

**The U.S. Commission On Civil Rights Statement Supporting Joint Guidance Issued By
The Department Of Education's Office For Civil Rights And The Department Of Justice
Regarding Protections Of Transgender Students**

The United States Commission on Civil Rights, by majority vote, strongly supports the joint guidance set forth by the Department of Education's Office for Civil Rights and the Department of Justice on the protections for transgender students under Title IX of the Education Amendments Act of 1972.

Title IX of the Education Amendments of 1972 (Title IX) states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..."¹ The Department of Education's Office for Civil Rights and the Department of Justice issued guidance stating that for the purposes of Title IX and its implementing regulations, "[t]he Departments treat a student's gender identity as the student's sex..."² To ensure nondiscrimination on the basis of sex, transgender students must be allowed to participate in activities, use facilities, and access housing consistent with their gender identities.³ Under Title IX and Family Educational Rights and Privacy Act, a school is obligated to protect transgender students' privacy related to their transgender status.⁴ Schools are required to provide a safe and nondiscriminatory environment, and when harassment based on gender identity is discovered, "...must take prompt and effective steps to end the harassment, prevent its reoccurrence, and, as appropriate, remedy its effects."⁵

The guidance put forth by the Department of Education and the Department of Justice reasonably interprets sex discrimination to necessarily include gender identity discrimination for the purposes of compliance with Title IX. It is the logical outgrowth of voluntary resolutions into which both Departments entered in prior litigation.⁶ It also serves as the correct foundation of the recent decision handed down by the Fourth Circuit, that the Department's interpretation of its own regulations regarding restroom access by transgender individuals should be given deference.⁷

On April 18, 2016, the U.S. Commission on Civil Rights, by a majority vote, strongly condemned the recent state laws and proposals targeting members of the lesbian, gay, bisexual, and transgender ("LGBT") community for discrimination, including North Carolina's legislation forcing transgender people to use public bathrooms based on sex, and not according to their

¹ 20 U.S.C. §1681(a)

² Catherine Lhamon, Office for Civil Rights, U.S. Dep't of Ed., Vanita Gupta, Principal Deputy Assistant Attorney General for Civil Rights, U.S. Dep't of Justice, Dear Colleague Letter, May 13, 2016, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *See, e.g.*, Resolution Agreement Between Arcadia Unified School District, the U.S. Dept. of Education, and The U.S. Dept. of Justice, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70 (July 24, 2013), <https://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf> and Agreement to Resolve Between Township High School District 211 and the U.S. Department of Education, Office for Civil Rights, OCR Case #05-14-1055 (December 2, 2015), <http://adc.d211.org/wp-content/uploads/2015/12/D211-OCR-Agreement.pdf>

⁷ *See* G.G. v. Gloucester Cnty. Sch. Bd., 2016 WL 1567467 (4th Cir. 2016);

gender identities.⁸ These recent state laws attempting to nullify the protections of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to individuals based on gender identity jeopardizes the dignity and physical safety of transgender people.⁹ Today, we strongly support the Departments' joint guidance on this issue.

Commission Chair Martin R. Castro stated, "Transgender students have the same rights as other students. Transgender students present a threat to no one. These students are our children. Our schools must not be allowed to strip them of their dignity and if our states fail to afford these students their rights, it is incumbent upon the federal government to intervene and protect these children."

The Commission, therefore, stands with the Department of Education and the Department of Justice as they ensure the promise of fair educational opportunities for every student, regardless of their gender or transgender status.

⁸ USCCR, The U.S. Commission on Civil Rights Statement Condemning Recent State Laws and Pending Proposals Targeting the Lesbian, Gay, Bisexual, and Transgender Community, April 18, 2016, available at http://www.usccr.gov/press/2016/PR_Statement_LGBTDiscrimination.pdf.

⁹ *Id.*