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DISCRIMINATION COMPLAINT OF STUDENT AGAINST HIGH SCHOOL

December 5, 2013

Via Email

Office for Civil Rights
Chicago Office
U.S. Department of Education
Citigroup Center
500 W. Madison Street,
Suite 1475
Chicago, IL 60661-4544

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To Whom It May Concern:

I write to file a complaint against **High School** and Township High School District 211 on behalf of **Student**. **High School** and Township High School District (“the District”) are discriminating against **Student** on the basis of her sex in violation of Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681(a) (“Title IX”).

I. Contact Information for the Parties

Student
[Please contact through Counsel]

Dr. Nancy Robb, Superintendent
Township High School Dist. 211
1750 South Roselle Rd.
Palatine, IL 60067
T: 847-755-6610
F: 847-755-6623
nrobb@d211.org

II. Facts

Student is a [REDACTED] transgender girl currently in [REDACTED] a public high school located in [REDACTED], Illinois that is part of Township High School District 211. **Student** is an outgoing young woman who receives good

grades, participates in **athletics** and various clubs at **High School**, and is very close with her **family**.

Although designated male at birth, **Student** has identified as female from a young age, and came out to her family as transgender **several years ago**. In [REDACTED], **Student** was diagnosed with gender dysphoria, a diagnosis recognized by the American Psychiatric Association for persons who experience incongruence between their experienced/expressed gender and assigned gender and clinically significant distress or impairment in functioning. She has been treated for that condition by Drs. [REDACTED] and [REDACTED] since [REDACTED]. With the help and support of her **Parents** and her medical providers, **Student** transitioned to living as female **a few years ago**. Since [REDACTED], **Student** has lived her life full-time as a girl by dressing and presenting as female, requesting that everyone use her female name and pronouns for her, and by using female bathrooms, with the exception of those at school, and any other facilities that are divided by sex, with the exception of those at school. In addition, **Student** started hormone therapy in [REDACTED], completed a legal name change in [REDACTED], and obtained a passport listing her gender as female in [REDACTED].

Wanting her entry into high school to go as smoothly as possible, **Student** and her **Parents** requested a meeting with administrators at **High School** prior to the start of **Student's** freshman year to request that **High School** treat her as female in all ways, including sports, and bathroom and locker room access. Following a meeting that took place on [REDACTED], **the High School Psychologist** informed **Student** that she would be allowed to use the girls' restrooms and wear the female uniform for **athletics**, but that she would not be allowed to use the girls' locker room to change for her daily gym class. Instead, **the High School Psychologist** informed **Student** that she would have to use a separate bathroom down a long hallway from the gym. **Student** has been using this bathroom to change her clothes for gym since the beginning of her [REDACTED] school year.

Unsatisfied with the school's position, **Student** requested a meeting with **the High School Principal**. On [REDACTED], **Student** and **Parents**, along with [REDACTED] from the Illinois Safe Schools Alliance, met with **the High School Principal** to request girls' locker room access for **Student**. During the meeting, the **Family** advised **the Principal** that **Student's** passport listed her gender as female. **The Principal** stated that this fact might change the administration's decision about whether **Student** could use the girls' locker room.

On [REDACTED], **the Principal** met with **Student** to advise her of the school's latest position and later called **Parent** to give her the same information. The school would continue to deny **Student** access to the girls' locker room, but would allow her to use a restroom next to the locker room to change for gym. This bathroom has a door to the hallway and another door connecting it to the girls' locker room. **The Principal** proposed installing a locker in the bathroom where **Student** could store her clothes. **Student** would continue to be barred from entering the locker room where the other girls' in her class change.

On [REDACTED], the undersigned attorney wrote a letter to **High School** and the District on behalf of the **Family** urging the school to allow **Student** to use the girls' locker room to

change for her gym class (attached). On [REDACTED], **Parent** and **Student** again met with administrators from the District and from **High School**, including Dr. Nancy Robb, Superintendent of the District, and **the Principal** to discuss the locker room issue. At the second meeting, Dr. Robb informed the **Family** that the school would not change its position regarding the locker room. On [REDACTED], the undersigned attorney sent a second letter to **High School** and the District again requesting girls' locker room access (attached). The next day, on [REDACTED], Dr. Robb informed the undersigned attorney by phone that the school would not change its position and would continue to deny **Student** use of the girls' locker room.

Student is unhappy with the District's decision for several reasons. First, the District's decision to ban **Student** from the locker room used by all her fellow female classmates and to require her to change by herself in a separate bathroom is stigmatizing to **Student**, since it singles her out as being different. In addition, the bathroom where she is currently required to change is located a distance away from the gym, is locked, and **Student** sometimes has to locate someone to unlock it for her before she can change, which causes her to be late to gym class.

The alternative of allowing **Student** to change in the bathroom adjacent to the locker room is equally unsatisfying. Although it allows **Student** to change in a location closer to the gym, it continues to treat her differently than the other freshman girls. This arrangement still ostracizes her by banning her from using facilities all of the other female students are allowed to use and isolates her in a separate space, labeling her as distinct from all of her fellow students, male or female.

III. Legal Claims

Under Title IX of the Education Amendments, 1972, 20 U.S.C. § 1681(a) ("Title IX"), "[n]o 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 . . ." 20 U.S.C. §1681(a). Regulations implementing Title IX also specify that prohibited discrimination includes "[p]rovid[ing] *different* aid, benefits, or services or provid[ing] aid, benefits, or services *in a different manner*[" 34 C.F.R. § 106.31(b)(2) (emphasis added). Upon information and belief, the District receives federal financial assistance, and is subject to Title IX. The District's decision to bar **Student** from entering and using the girl's locker room and require her to change in a private bathroom away from her fellow students is sex discrimination in violation of Title IX.

Transgender and gender-nonconforming students are protected from sex and gender-based discrimination under Title IX. *See, e.g., Pratt v. Indiana River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 150-52 (N.D.N.Y. 2011); *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008); *Montgomery v. Independent Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1090 (D. Minn. 2000); Letter of Findings, Tehachapi Unified School Dist., OCR Case No. 09-11-1031, DOJ

Case Co. DJ 169-11E-38, at 2 (June 30, 2011).¹ The District has discriminated against **Student** in three ways.

First, the differential treatment is *per se* discrimination on account of **Student**'s gender identity. See *Macy v. Holder*, 2012 WL 1435995, at *6 (E.E.O.C. Apr. 20, 2012) ("Title VII's prohibition on sex discrimination proscribes gender discrimination, and not just discrimination on the basis of biological sex . . ."). The District is singling **Student** out for differential treatment and segregating her from other students because **Student**'s gender identity does not match the sex she was assigned at birth.²

Second, the District's actions are also *per se* sex discrimination because the differential treatment is due to **Student**'s change of sex. See *Schroer v. Billington*, 577 F. Supp. 2d 293, 308 (D.D.C. 2008) (discrimination based on plaintiff's decision to transition was actionable discrimination on the basis of sex under Title VII). The District is segregating **Student** because of her change of sex, and treating **Student** differently than other students who have not undergone a change of sex.

Third, the District's decision to bar **Student** from the girl's locker room is unlawful sex stereotyping. The District has determined that **Student** is not feminine enough to use the girl's locker room and is treating her differently because of her failure to conform fully to female gender stereotypes. See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (discrimination based on gender stereotypes is actionable under Title VII); *Glenn v. Brumphy*, 663 F.3d 1312, 1317 (11th Cir. 2011) ("[D]iscrimination against a transgender individual because of her gender-nonconformity is sex discrimination."); *Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004) ("[D]iscrimination against a plaintiff who is a transsexual-and therefore fails to act and/or identify with his or her gender-is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*, who, in sex-stereotypical terms, did not act like a woman."). See also "Dear Colleague" Letter of Russlynn Ali, Ass't Sec'y for Civil Rights (Oct. 26, 2010), available at: <http://www.2ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (U.S. Department of Education recognizing that Title IX prohibits gender stereotyping).

¹ The U.S. Department of Education's Office for Civil Rights and the U.S. Department of Justice's Educational Opportunities Section have previously recognized the fact that transgender students receive protection against sex-based discrimination under Title IX in a Letter of Resolution regarding a similar instance of discrimination and segregation against a transgender student by the student's school. Letter of Resolution, DOJ Case No. DJ 169-12C-70, OCR Case No. 09-12-10120, at 2 (July 24, 2013) ("All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX".)

² Courts generally rely on Title VII legal standards and principles when interpreting Title IX cases, especially those of first impression. *Doe v. Univ. of Illinois*, 138 F.3d 653, 665 (7th Cir. 1998) ("federal courts look to cases decided under Title VII to inform analysis under Title IX"), *vacated on other grounds*, 526 U.S. 1142 (1999); See also *Wolfe v. Fayetteville, Ark. Sch. Dist.*, 648 F.3d 860, 865-66 (8th Cir. 2011); *Weinstock v. Columbia Univ.*, 224 F.3d 33, 42 n.1 (2d Cir. 2000); *Oona v. McCaffery*, 143 F.3d 473, 476 (9th Cir. 1998).

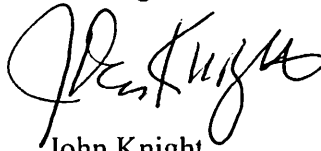
IV. Conclusion and Request for Relief

We respectfully request that the Office for Civil Rights find that **High School** and the District violated Title IX by segregating **Student** and forcing her to change in a separate bathroom, and barring her from using the girl's locker room as the rest of her fellow female classmates are allowed to do. We request that **High School** and the District:

- (1) stop requiring **Student** to change in a separate space from the other girls;
- (2) allow **Student** to use the girls' locker room and all other sex-segregated facilities on an equal basis with the other girls at **High School** and the District;
- (3) provide training to all relevant **High School** and District officials regarding the rights of students under Title IX, including the rights of transgender and gender-nonconforming students;
- (4) revise all relevant **High School** and District policies to ensure compliance with Title IX, and provide training on the proper implementation and execution of such policies.³

Thank you for your time and attention in this matter.

Best regards,



John Knight

Director, LGBT and AIDS Project

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Enclosures

³ This relief is consistent with the relief outlined in a July 2013 resolution agreement entered into by the Arcadia Unified School District in Arcadia, Calif., and the U.S. Department of Education's Office for Civil Rights and the U.S. Department of Justice's Educational Opportunities Section, in a similar instance of discrimination and segregation against a transgender student by the student's school. Letter of Resolution, DOJ Case No. DJ 169-12C-70, OCR Case No. 09-12-10120 (July 24, 2013).