



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CHICAGO, IL 60661-4544

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December 3, 2015

Mr. John Knight
Director, LGBT and AIDS Project
The Roger Baldwin Foundation of ACLU, Inc.
180 North Michigan Avenue, Suite 2300
Chicago, Illinois 60601

OCR Case No. 05-14-1055

Dear Mr. Knight:

On November 2, 2015, OCR issued a letter finding Township High School District 211 (District) in violation of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681–1688, and Title IX’s implementing regulations at 34 C.F.R. Part 106, with respect to the above-referenced complaint. The complaint alleged that the District discriminated against a transgender high school student on the basis of sex. Specifically, the complaint alleged that the District denied the student access to the girls’ locker rooms because of her gender identity and gender nonconformity.

OCR is responsible for enforcing Title IX, which prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. The District is a recipient of Federal financial assistance from the Department of Education, and is therefore subject to the requirements of Title IX and its implementing regulations. OCR therefore has jurisdiction over this complaint.

Under 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). The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides, in relevant part, that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, or other education program or activity operated by a recipient which receives Federal financial assistance. The regulation implementing Title IX, at 34 C.F.R. § 106.31(b), further provides that a recipient may not, on the basis of sex, deny any person such aid, benefit or services;

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

treat an individual differently from another in determining whether the individual satisfies any requirement or condition for the provision of such aid, benefit, or service; provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; subject any person to separate or different rules of behavior; or otherwise limit any person in the enjoyment of any right, privilege or opportunity. All students, including transgender students, are protected from sex-based discrimination under Title IX.

OCR's November 2, 2015 letter finding the District to be in violation of Title IX and its implementing regulations with respect to the allegation at issue in the complaint is incorporated by reference into this letter. As explained in the letter of findings, the District's nondiscrimination notice and nondiscrimination policy specifically prohibit discrimination on the basis of gender. OCR's investigation revealed that, except with respect to locker room access, the District has treated the student consistent with her gender identity as a girl. This includes designating the student as female in its computer system, identifying the student by her female name and with female pronouns, providing her with full access to all girls' restrooms, and allowing her to participate in girls' interscholastic athletics.

OCR concluded that the District violated Title IX because, for more than two school years, it has denied the student access to the girls' locker rooms at her high school to change clothes for her athletics activities and for the mandatory physical education (PE) classes needed to satisfy the graduation requirements and receive a high school diploma. Instead, the District has offered the student only separate facilities to change clothes; these facilities are not comparable to those provided other students. As result of the District's denial of access for the student to its girls' locker rooms, the student has not only received an unequal opportunity to benefit from the District's educational program, but has also experienced an ongoing sense of isolation and ostracism throughout her high school enrollment. The student has missed receiving information and access to rental gym uniforms provided to other students in the locker rooms and missed opportunities for bonding with her teammates in the locker rooms.

In October 2015, the District installed five privacy curtains in one of the three girls' locker rooms, specifically the girls' PE locker room. Nevertheless, the District continued to deny the student access to this locker room and any of the other girls' locker rooms, even though the student requested an opportunity to change clothes in private in the locker rooms and has stated that she would use privacy curtains if available. The District had asserted that it must deny the student access to the girls' locker rooms in order to protect the privacy interests of all students.

OCR determined that, given the student's request to change privately, the District could afford equal access to its locker rooms and protect the privacy of all its students. In summary, OCR concluded that the District, on the basis of sex, excluded the transgender high school student from participation in and denied her the benefits of its education program, provided her different benefits or benefits in a different manner, subjected her to different rules of behavior, and subjected her to different treatment in violation of the Title IX regulation, at 34 C.F.R. § 106.31.

On December 3, 2015, OCR received the signed copy of the enclosed Agreement to Resolve (Agreement) from the District. Under the Agreement, the District agreed to take the following specific actions:

- Provide the student with equal access to the girls' locker rooms at her high school based on the student's request to change in private changing stations in the girls' locker rooms;
- Protect the privacy of its students by installing sufficient privacy curtains within the girls' locker rooms at the high school to accommodate the transgender student and any students who wish to be assured of privacy;
- Provide a reasonable alternative for any student requesting additional privacy—beyond the privacy afforded by the privacy curtains—in the girls' locker rooms. Examples could include use of another private area or assignment of a locker in near proximity to the office of a teacher or coach;
- Coordinate with hosts of off-campus, District-sponsored activities to arrange for the transgender student to be provided access to facilities for female students;
- Engage a consultant (who may be a District employee) with expertise in child and adolescent gender identity, including transgender and gender nonconforming youth, to support and assist the District in implementing the resolution agreement;
- Establish a support team, if requested by the transgender student and her parents, to ensure that she has access and opportunity to participate in all District programs and activities, and is otherwise protected from gender-based discrimination at school;
- Adopt and publish a revised notice of nondiscrimination on the basis of sex that complies with the Title IX requirements; and
- Provide OCR with a copy or detailed description of all gender-based discrimination or harassment complaints or incidents.

The Agreement is designed, when fully implemented, to resolve this complaint and remedy the District's Title IX violation by, for the first time in her high school career, providing the student equal access to the girl's locker rooms, while also protecting her privacy and the privacy of all students. As to other students, OCR noted that the District's nondiscrimination policy specifically prohibits discrimination based on gender. To ensure that all students, including transgender students, are not discriminated on the basis of gender, the Agreement requires the District to provide OCR with information on all gender-based discrimination incidents and complaints. OCR will monitor implementation of the Agreement until the District has fulfilled the terms of the Agreement and is in compliance with Title IX and its implementing regulations at issue in this case.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, a complaint may be filed alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

If you have any questions about this matter, please do not hesitate to contact Melissa Howard, Attorney Advisor, at 312-730-1527.

Sincerely,

A handwritten signature in cursive script that reads "Adele Rappoport". The signature is written in black ink and features a long, horizontal flourish extending to the right from the end of the name.

Adele Rappoport
Regional Director

Enclosure

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

In order to resolve the issues in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972 (Title IX), Township High School District 211 (District), without admitting any violation of federal law or regulations, agrees to take the actions outlined in this Resolution Agreement.

TERMS OF THE AGREEMENT

I. EXPERT CONSULTANT

- A. No later than thirty (30) calendar days after execution of this Agreement, the District will engage one or more third-party consultants with expertise in child and adolescent gender identity, including transgender and gender nonconforming youth, to support and assist the District in implementing this Agreement. The District may propose as its consultant a current employee of the District, if it currently employs an individual with the required expertise and experience.
- B. The consultant(s) will be agreed upon by both the District and OCR.

Reporting Requirement: Within 30 calendar days of the execution of this Agreement, the District will provide OCR with a written summary of the expert consultant it proposes to engage, including that individual's application and resume and/or documentation concerning the individual's previous position(s), employer(s) or professional affiliation(s).

Within 30 calendar days of OCR's approval of the nominee, the District will provide OCR with written documentation that it has engaged the expert consultant.

- C. The District will promptly notify OCR if it intends to retain additional or alternative consultants during the term of this Agreement for purposes of implementing this Agreement.
- D. The District will be responsible for all costs, if any, associated with the retention of expert consultants.

Reporting Requirement: Within 30 days of any determination to retain additional or alternative consultants, the District will provide OCR with a written summary of the expert consultant it proposes to engage, including that individual's application and resume and/or documentation concerning the individual's previous position(s), employer(s) or professional affiliation(s).

Within 30 calendar days of OCR's approval of the nominee, the District will provide OCR with written documentation that it has engaged the expert consultant, the contact information of each

additional consultant retained by the District in connection with this Agreement, as well as the start and end dates of each individual's services.

II. INDIVIDUAL MEASURES

A. For the duration of Student A's enrollment in the District:

1. based on Student A's representation that she will change in private changing stations in the girls' locker rooms, the District agrees to provide Student A access to locker room facilities designated for female students at school and to take steps to protect the privacy of its students by installing and maintaining sufficient privacy curtains (private changing stations) within the girls' locker rooms to accommodate Student A and any students who wish to be assured of privacy while changing;
2. the District will coordinate with hosts of off-campus, District-sponsored activities to arrange that Student A is provided access to facilities designated for female students in a manner consistent with item II.A.1. The District will work with Student A to honor her requests for facility accommodations in the least disruptive manner possible for Student A; and
3. the District will continue to ensure that any school records containing Student A's birth name or reflecting Student A's assigned sex, if any, are treated as confidential, personally identifiable information; are maintained separately from Student A's records; and are not disclosed to any District employees, students, or others except as allowed by state and federal laws governing the release of student record information.

Reporting Requirement: By January 15, 2016, the District will provide OCR with written documentation of its compliance with item II.A, including but not limited to, any and all documentation relating to Student A's access to girls' locker rooms and a copy of Student A's registration and enrollment materials confirming her name and preferred gender identity. The District will provide OCR with a monitoring report describing its ongoing compliance with item II.A on October 1 and February 1 of each year that this Agreement is in force.

- B. If any student requests additional privacy in the use of sex-specific facilities designed for female students beyond the private changing stations described in item II.A.1, the District will provide that student with access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.

Reporting Requirement: By January 15, 2016, the District will provide OCR with written documentation of any request made pursuant to Item II.B. and a description of the steps taken by the District to accommodate that request.

- C. No later than thirty (30) calendar days after execution of this Agreement, the District will notify Student A and her parents that they may, at any point during Student A's enrollment in the District, request the District to establish a support team to ensure Student A has access and opportunity to participate in all programs and activities, and is otherwise protected from gender-based discrimination at school. If the District receives such a request, it will form a support team that will:
1. include, at a minimum, Student A, her parents, an advocate or representative of the parents' choice (if any), a medical professional of the parents' choice (if any), and relevant District personnel familiar with Student A;
 2. develop a student-specific support plan to provide Student A with access to all school and District facilities and activities, addressing any particular issues raised by Student A or her parents;
 3. document its meetings, recommendations, and decisions, including, but not limited to, the date and location of each meeting, the names and positions of all participants, the basis for its recommendations and decisions, and supporting third-party opinions and information considered and/or relied upon in the meeting; and
 4. at least once each school year and at any time upon the request of Student A or her parents, review Student A's circumstances to determine whether existing arrangements related to Student A's gender identity, gender transition, or transgender status are meeting her educational needs and ensuring that Student A has access and opportunity to participate in the District's education programs and activities. Once constituted, the support team will be in place for the remainder of Student A's enrollment in the District or until her parents request in writing that it be terminated.

Reporting Requirement: Within 30 calendar days of the execution of this Agreement, the District will provide OCR with written documentation of its compliance with item II.C, including but not limited to, documentation of the request for the formation of the team, the names and positions of the team members, date(s) the team met, and any documentation of its meetings, recommendations, and decisions. The District will provide OCR with a monitoring report describing its ongoing compliance with item II.C on October 1 and February 1 of each year that this Agreement is in force.

III. NON-DISCRIMINATION NOTICE

- A. By January 15, 2016, the District will draft and submit to OCR for review and approval a revised notice of nondiscrimination on the basis of sex that meets the requirements of the Title IX regulation, at 34 C.F.R. § 106.9, including, but not limited to, stating that the District does not discriminate on the basis of sex in its educational program or activities, stating that inquiries about sex discrimination may be referred to the Title IX Coordinator or OCR, and including the name or title and contact information (address, email address, and telephone number) for the District's Title IX Coordinator, as required by the Title IX regulation, at 34 C.F.R. § 106.8. The following statement will satisfy this requirement and be approved by OCR:

Township High School District 211 does not discriminate on the basis of sex in its educational programs or activities, and is required by Title IX not to discriminate in such a manner. This prohibition extends to employment and admission. The following employee(s) have been designated to address questions or complaints about discrimination: Title IX Coordinator, [Name or Title], [Address], [Email Address], [Phone Number]. Inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or to OCR.

- B. Within 30 days of OCR's approval, the District will publish the revised notice of nondiscrimination on its website and as otherwise required by the Title IX regulation, at 34 C.F.R. § 106.9.

Reporting Requirement: By January 15, 2016, the District will provide OCR with draft revised notice of nondiscrimination for OCR's approval pursuant to item III.A. Within 60 days of OCR's approval, the District will publish the revised notice of nondiscrimination on its website, as well as in each announcement, bulletin, catalog, or application form which it makes available, as required by the Title IX regulation, at 34 C.F.R. § 106.9.

IV. MONITORING AND REPORTING

- A. The District will provide documentation of its compliance with this Agreement through written compliance reports, which will be produced to OCR, as described above. In addition, to demonstrate its compliance with this Agreement, Title IX and its implementing regulation, by June 1, 2016, the District will provide the following documentation:
1. a copy or detailed description of all gender-based discrimination or harassment complaints or incidents that occurred during the reporting period, including documentation or a detailed written description of the District's response to each incident;
- B. The District will provide all reports, documents, and information required to be produced to OCR pursuant to this Agreement in electronic form, usable by OCR,

or in written form if the data in electronic form would not be usable, in accordance with the timelines set herein.

Based on the terms and reporting requirements of this Agreement, OCR anticipates closing its monitoring of this Agreement by June 30, 2017.

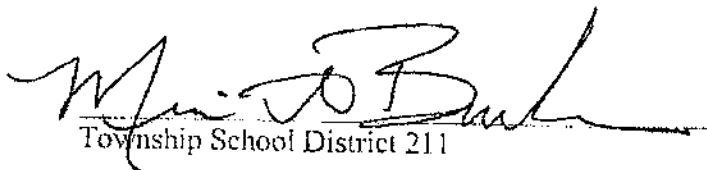
The District understands that OCR will not close the monitoring of this Agreement until OCR determines the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX, 34 C.F.R. §§ 106.9 and 106.31, which were at issue in this case.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX, 34 C.F.R. §§ 106.9 and 106.31, which were at issue in this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings, including to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

Signed:

Date:


Township School District 211

12/2/15