



April 22, 2015

Fairfax County School Board
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Dear School Board Members:

We write to urge you to pass proposed Policy 1450.6, which would add “gender identity” to the categories of prohibited discrimination. This amendment will provide much-needed protection to a class of students who are particularly vulnerable to harassment and other forms of discrimination, and will help to ensure Fairfax County Public Schools’ (FCPS) compliance with federal law.

As you know, Virginia Attorney General Mark Herring recently affirmed that Virginia school boards have the legal authority to prohibit discrimination based on gender identity. According to the United States Department of Justice and the United States Department of Education, as recipients of federal financial aid, public school boards *must* do so.

“Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and [the Office of Civil Rights] accepts such complaints for investigation.” Dep’t of Educ., Office of Civil Rights, *Questions & Answers on Title IX & Sexual Violence*, at 5 (Apr. 29, 2014), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>. *See also* Letter of Resolution, Arcadia Unified School District, 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.”). *Cf.* Dep’t of Educ., Office of Civil Rights *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* (Dec. 1, 2014) (“Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.”) *See also*, Resolution Agreement, Downey Unified School District, OCR Case No. 09-12-1095, at 1 (Nov. 8, 2014), *available online at* <http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf>; Resolution Agreement, Arcadia Unified School District, DOJ Case No. DJ 169-12C-70, OCR Case No. 09-12-10120, at 2 (July 24, 2013), *available online at* http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf.

Federal courts have also held that Title IX protects students from discrimination based on gender identity. *See, e.g., Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp.

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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).

In Virginia and elsewhere, opposition to nondiscrimination policies has been based on unfounded fears, stereotypes, and ignorance about what it means to be transgender. All too often, young people who are struggling to navigate the difficult years of adolescence are treated as objects of fear and derision. FCPS should not allow the voices of unreason to dehumanize any of its students, and should instead ensure equal access to education for all children.

Thank you for your attention to this matter.

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Sincerely,



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