



Steve Spencer
Principal
Dallas High School
1250 SE Holman Ave.
Dallas, OR 97338

November 23, 2015

Re: Disclosure of Elliot Yoder's gender identity to the Dallas High School community

Dear Mr. Spencer,

We write to you on behalf of Elliot Yoder, a transgender student at Dallas High School. We appreciate Dallas High School's commitment to a school environment that is free of discrimination and the school's recognition that state and federal laws require that transgender students be able to fully participate in school activities and have access to facilities consistent with their gender identity. We also understand that as part of the school's anti-bullying activities, school administrators have disclosed Elliott's transgender status to his peers in a physical education class and that the school similarly has informed—or plans to inform—the Dallas High School parent community of Elliott's transgender status. Even if the disclosure does not explicitly name Elliott, notifying students and parents that there is currently a transgender student attending the school would constitute *per se* disclosure of Elliott's transgender status, because he is visibly gender non-conforming and other students will realistically assume that he is the student described as transgender. Such disclosures will cause Elliott significant emotional distress, place him at serious risk of harassment and violence, and violate federal and state law, as explained below. Pursuant to the school's legal obligations, it is imperative that there be no further disclosures of Elliott's transgender status without his express permission.

Transgender students have a reasonable expectation that their intrinsically personal information will not be revealed by school officials without their authorization and the disclosure of a student's transgender status without the student's consent is a violation of federal and state nondiscrimination laws as well as the student's constitutional right to privacy. The Department of Education's Office for Civil Rights, the federal agency tasked with enforcing Title IX, has made clear such unauthorized disclosures constitute a form of harassment under Title IX. This year, the United States filed a Statement of Interest in a federal lawsuit, reiterating that harassment and discrimination based on transgender status constitutes sex discrimination under Title IX, and that the disclosure of the transgender status of a student by school personnel to other students established a *prima facie* case of sex discrimination under Title IX.¹ Similarly, a 2013 resolution agreement between the U.S. Department of Education Office for Civil Rights and a California school district directed that school communications must not disclose a student's gender identity or transgender status to others without the student's express consent.²

¹ See <http://www.justice.gov/sites/default/files/crt/legacy/2015/02/27/tooleysoi.pdf>.

² See <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

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In addition, unauthorized disclosures of a student's transgender status violate privacy laws, including the Family Educational Rights and Privacy Act (FERPA), and federal and state constitutional privacy guarantees.

Because transgender students face severe and unrelenting harassment and violence in schools,³ many transgender students choose not to disclose their transgender status to their school community. Best practices reflected in model policies across the nation have established that transgender students must control when, with whom, and how much highly personal and private information, such as one's gender identity and transgender status, to share about themselves with others.⁴ Each of these policies make clear that a student's transgender status, their legal name, or their sex at birth is confidential information and that district personnel cannot disclose a student's gender identity to others, including other students, parents or school personnel, without the student's express consent. The policies further encourage school personnel to be in regular contact with transgender students to ensure that issues of privacy are discussed and addressed in a timely manner.

We commend Dallas High School's anti-bullying initiative to ensure a nondiscriminatory environment for all of its students and we are happy to serve as a resource to the school to ensure that continued efforts to support Elliott are in line with legal requirements and best practices. We look forward to continued dialogue on the issue. Please do not hesitate to contact any of us listed below with questions or further guidance.

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³ See Gay, Lesbian and Straight Educational Network (GLSEN), 2013 National School Climate Survey, available at <http://www.glsen.org/article/2013-national-school-climate-survey>.

⁴ See, e.g., Prohibiting Discrimination in Washington Public Schools, Superintendent of Public Instruction, February 2012, available at <http://www.k12.wa.us/Equity/pubdocs/ProhibitingDiscriminationInPublicSchools.pdf>; California School Board Association Policy Brief: Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender Non-Conforming Students, February 2014, available at <https://www.csba.org/~media/E68E16A652D34EADA2BFDCD9668B1C8F.ashx>; Massachusetts Dep't of Elementary and Secondary Education, Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment, at <http://www.doe.mass.edu/ssce/GenderIdentity.pdf>.