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FOIA Public Liaison
U.S. Department of Education
Office of Management, Privacy, Information, and Records Management Services
400 Maryland Avenue, SW LBJ 2E320
Washington, DC 20202-4536

Submitted via E-mail

To Whom It May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I request that a copy of the following documents (or documents containing the following information) be provided to me:

- Any and all documents establishing current guidance, rules, or similar content for educational institutions how to comply with Title IX's prohibition on discrimination on the basis of gender identity with respect to the use of restrooms and other similar sex-segregated facilities.
- Any and all documents establishing current guidance, rules, or similar content used by the Department of Education to determine whether a particular educational institution's policies on the use of restrooms and other similar sex-segregated facilities by transgender individuals violate the ban on discrimination on the basis of gender identity contained within Title IX.

I request that the documents be produced in electronic format, preferably conveyed by e-mail. If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all severable portions of otherwise-exempt material. I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I request a waiver of all fees for this request.

Specific explanation for waiver of fees:

- The subject matter of the requested records themselves must specifically concern identifiable "operations or activities of the government."

The requested records pertain to the Department of Education's role enforcing Title IX, and concern the operations or activities of the Department of Education in that capacity.

- In order for the disclosure to “likely contribute” to an understanding of specific government operations or activities, the disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request.

The disclosure is meaningfully informative in relation to the subject matter of the request: the Department of Education’s interpretations of Title IX. Current guidance, rules, or similar content used by the Department to guide and assess compliance with Title IX interpretations is the best available information on how the Department has interpreted Title IX, and will allow the public to more fully understand the implications of the Department’s interpretations.

- The disclosure must contribute to the “understanding of the public at large,” as opposed to that of the individual requester or a narrow segment of interested persons. With regard to this element, requesters should address with particularity and in detail the requester’s subject matter expertise and intentions, ability, and methods of disseminating information to the public.

As a regulatory attorney with years of experience in drafting, promulgating, and enforcing Federal guidance and regulations, including contentious regulations with net societal benefits exceeding \$1 billion and guidance regarding complicated statutes dating back to 1907, I have the subject-matter expertise necessary to distill the guidance, rules, or similar content disclosed by the Department of Education into the underlying interpretations of law that animate those documents. As an activist in the transgender community focusing on regulatory affairs, I have engaged in substantial activities to address continued discrimination on the basis of gender identity within the Federal government, including several meetings with the Office of Information and Regulatory Affairs concerning access to transition-related health care. My interpretations of Federal actions have been reported in the Federal Times, the Advocate, and most recently in BuzzFeed, discussing the Department of Labor’s interpretations of its prohibition on discrimination on the basis of gender identity in employment by Federal contractors.

Upon receipt of the disclosed information, the entirety will be posted to my personal site, <http://www.emily-esque.com>, with analysis to follow concurrently or shortly thereafter. As I expect the disclosure will be of interest to the public at large, I will be in communication with several journalists to discuss the disclosures and my analysis of the disclosed information in order to contribute to the public’s understanding of the Department of Education’s enforcement of Title IX.

- The disclosure must “contribute significantly” to public understanding of government operations or activities.

It is well documented that access to restrooms and other sex-segregated facilities is often a flashpoint in advocacy for measures to eliminate discrimination on the basis of gender identity. The Department of Education is aware of this fact, having only several months ago reached a settlement agreement with California’s Downey Unified School District following, in the words of a reporter for the Advocate, “the district’s failure to protect a trans student from years-long harassment and discriminatory treatment.” The settlement agreement, dated October 14, 2014, “memorializes the

Student's use of female-designated facilities at District schools and the District's agreement to otherwise treat the Student as a girl in all respects." The settlement here takes special notice of the student's need to access facilities consistent with her gender identity.

Despite the fact that discrimination on the basis of gender identity often happens in the context of sex-segregated facilities such as restrooms, the Department of Education has not, to the best of my knowledge, publicized any guidance to educational institutions or to the public regarding the rights of transgender students and students with non-binary gender identities to use facilities consistent with their gender identity. The public at large would benefit from the Department disclosing whatever guidance, rules, or similar content has been created to guide and assess compliance with Title IX.

- The request must not involve any "commercial interest of the requester," or the public interest in disclosure must be greater in magnitude than the requester's commercial interest.

I have no commercial interest in the material.

Thank you for your consideration of this request. Please contact me as soon as possible should you have any questions. I look forward to your reply within 20 business days, as the statute requires.

Sincerely,

A handwritten signature in black ink, appearing to read 'Emily T. Prince', with a stylized, cursive script.

Emily T. Prince, Esq.