

Daniel B. Tilley | Staff Attorney
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Atlanta Office
Office for Civil Rights
U.S. Department of Education
61 Forsyth St. SW, Suite 19T10
Atlanta, GA 30303-8927

September 17, 2013

Via E-mail: ocr@ed.gov; ocr.atlanta@ed.gov

Re: Discrimination complaint of Alex Wilson against Pinellas County Schools

To Whom It May Concern:

We write to file a complaint against Pinellas County Schools (Florida) on behalf of Alex Wilson. Pinellas County Schools ("the District") is discriminating against Alex on the basis of her sex in violation of Title IX of the Educations Amendments of 1972, 20 U.S.C. § 1681(a).

I. Contact Information for the Parties

Alex Wilson
[Please contact through counsel.]

Dr. Michael A. Grego, Superintendent
301 Fourth St. SW
Largo, FL 33770
T: (727) 588-6011
F: (727) 588-6200
super@pcsb.org

II. Facts

Alex Wilson is a 25-year-old nursing student at the Clearwater campus of the Pinellas Technical Educations Centers (PTEC), a post-secondary institution that is part of the District. Alex is transgender: her birth-assigned sex was male, but her gender identity is female. She has received hormone treatments for four years and has been living as a woman for that entire time. She does not own men's clothing.

Although the nursing program in which Alex is enrolled began in April 2013, Alex enrolled in preparatory classes at PTEC in November 2012. From November 2012 to July 2013, Alex used the women's restrooms at PTEC.

On July 8, 2013, Alex was pulled out of her class in the nursing building and was informed by administrators that some of Alex's classmates were uncomfortable with her using the women's restrooms. Alex was told that she could either use (1) a single-occupant restroom in another building (the administration building) in what an administrator in a conversation on July 10 termed "the storage area," or (2) the faculty men's restroom in the nursing building. Initially, neither restroom locked from the inside. Further, to use the faculty men's restroom, Alex was initially required to interrupt class to obtain the key from her teacher. (Still today, she must obtain a key from behind an employee's desk.)

On July 10, 2013, Alex attended another meeting with administrators at their request. In that meeting, an administrator informed Alex that if she used either the men’s or women’s restrooms on campus, she would have charges pressed against her. She was told that she would have to use the restroom in “the storage area” or the family restroom in the copy room, both located in a separate building (the administration building) from Alex’s classes. Throughout the meeting, administrators referred to Alex using male pronouns.

Subsequent to that meeting, Alex obtained a new driver’s license with a female gender marker. She also had the gender marker changed in the records of the Social Security Administration. On July 15, 2013, Alex asked to speak to an administrator, and she showed him her new Florida driver’s license that identifies her as female. A copy of the license was made and forwarded to the “legal department.”

On July 24, 2013, Alex was informed that the response from the legal department was that nothing in Florida statutory law protects transgender people but that they will keep looking into it.

On August 22, 2013, we submitted a letter (attached) to the Superintendent of the District, requesting that he grant Alex “immediate access to all sex-specific programs, activities, and facilities at PTEC consistent with her gender identity, including access to the women’s restrooms.”

On August 28, 2013, the Superintendent responded with a letter (attached). The Superintendent’s letter states that he has “directed staff to review the facts of this matter and provide appropriate accommodations, which may include creating one or more unisex restrooms.”¹

III. Law

Title IX states that “[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 District receives federal financial assistance.²

Requiring Alex to use separate restrooms than those used by other students constitutes sex discrimination in violation of Title IX. First, it is *per se* sex discrimination because the differential treatment is based on her gender identity. *Macy v. Holder*, 2012 WL 1435995, at *6 (E.E.O.C. Apr. 20, 2012)³ (“Title VII’s prohibition on sex discrimination proscribes gender discrimination, and not just discrimination on the basis of biological sex”).⁴ It is further *per se* sex discrimination because the treatment is based on her gender transition. *See Schroer v. Billington*, 577 F. Supp. 2d 293, 308 (D.D.C.

¹ The Superintendent’s letter notes that unisex restrooms were “an option suggested by Alex in a recent news article.” Alex has suggested that the school should have gender-neutral restrooms, but this would not resolve her complaint.

² *See, e.g.*, https://www.pcsb.org/images/stories/Finance/Documents_Budget/12-13_Annual_Budget_Summary_1.pdf.

³ EEOC DOC 0120120821, *available at* <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>.

⁴ “Courts have generally assessed Title IX discrimination claims under the same legal analysis as Title VII claims.” *Gossett v. Okla. Ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1176 (10th Cir. 2001).

2008) (discrimination based on plaintiff’s plan to undergo transition “was *literally* discrimination ‘because of . . . sex’” under Title VII) (alterations in original). Finally, this treatment is unlawful sex stereotyping because Alex is being treated differently based on her failure to conform to gender stereotypes—PTEC does not consider her sufficiently feminine to use the women’s restrooms. See *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) (“[D]iscrimination against a transgender individual because of her gender-nonconformity is sex discrimination.”).⁵

IV. Conclusion

We respectfully request that the Office for Civil Rights find that the District violated Title IX by requiring Alex to use segregated restrooms, and we ask that the District:

(1) stop requiring Alex to use separate restrooms and instead allow her to use the same restrooms used by other women at PTEC;

(2) provide training to all relevant District officials—including but not limited to PTEC administrators, the members of the Board of Education, and school principals—regarding the rights of students under Title IX, including the rights of transgender students; and

(3) revise all relevant District policies to ensure conformity with the requirements of Title IX.⁶

Thank you very much for your assistance in this matter.

Sincerely,

/s/ Daniel B. Tilley

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⁵ That Title IX prohibits gender stereotyping has also been recognized by the U.S. Department of Education. See “Dear Colleague” Letter of Russlynn Ali, Ass’t Sec’y for Civil Rights (Oct. 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

⁶ This requested relief is consistent with the relief provided in a July 2013 resolution agreement entered into by the U.S. Department of Justice’s Educational Opportunities Section and the U.S. Department of Education’s Office for Civil Rights with the Arcadia Unified School District in Arcadia, Calif., available at <http://www.justice.gov/crt/about/edu/documents/casesummary.php#arcadia>.

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Superintendent Dr. Michael A. Grego
Pinellas County School Board
301 Fourth Street SW
Largo, FL 33770

August 22, 2013

Via E-mail: super@pcsb.org

Re: Alex Wilson, a nursing student at PTEC

Dear Dr. Grego,

I am writing on behalf of Alex Wilson, a nursing student at Pinellas Technical Education Center. Alex is a transgender woman who seeks to use the women's restroom at PTEC, as other women are allowed to do. Because she has been denied this basic right, we write to seek your assistance in ensuring that PTEC administrators comply with federal law.

As we understand it, Alex has undergone appropriate clinical treatment for her gender transition, including receiving hormone treatments. She has been living as a woman for more than four years. Although her nursing program started this past April, she enrolled in preparatory classes at PTEC in November 2012. From November until July, Alex used the women's restrooms at PTEC. On July 8, 2013, having become aware that Alex is transgender, school officials informed her that she could no longer use the women's restroom. In apparent acknowledgement that it would be inappropriate for her to use the men's restroom, she was given two alternatives. First, she was offered the ability to use a restroom in a separate building in what an administrator termed "the storage area"; this restroom did not lock from the inside. Second, she was offered the ability to use the faculty men's restroom in the nursing building, which until recently also did not lock from the inside. Further, to use that restroom, she must first obtain a key from an administrator. On July 10, 2013, after media attention to the issue, an administrator also offered Alex the ability to use a family restroom in another building. During that same conversation—in which the administrator referred to Alex using the male pronoun "he"—the administrator informed Alex that if she used either the general women's rooms or men's rooms, charges would be pressed against her.

Requiring Alex to use separate restrooms than those used by other students constitutes sex discrimination in violation of Title IX. First, it is *per se* sex discrimination because the differential treatment is based on her gender identity. *Macy v. Holder*, 2012 WL 1435995, at *6 (E.E.O.C. Apr. 20, 2012)¹ ("Title VII's prohibition on sex discrimination proscribes gender discrimination, and not just discrimination on the basis of biological sex . . .").² It is further *per se* sex discrimination because the

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treatment is based on her gender transition. *See Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008) (discrimination based on plaintiff’s plan to undergo transition “was *literally* discrimination ‘because of . . . sex’” under Title VII) (alterations in original). Finally, this treatment is unlawful sex stereotyping because Alex is being treated differently based on her failure to conform to gender stereotypes—PTEC does not consider her sufficiently feminine to use the women’s restrooms. *See Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) (“[D]iscrimination against a transgender individual because of her gender-nonconformity is sex discrimination.”).³

As stated above, Alex has received appropriate clinical treatment for her gender transition, and she has been living as a woman for four years. Her records with the Social Security Administration identify her as female, and her State of Florida driver’s license also notes that she is female. Given that the State of Florida recognizes Alex as female, it is unclear why PTEC—a public entity in the State of Florida—refuses to do so. We are requesting that you grant Alex immediate access to all sex-specific programs, activities, and facilities at PTEC consistent with her gender identity, including access to the women’s restrooms.

Should administrators need assistance in drafting policies or educating administrators, teachers, staff, or students, we are always available as a resource.⁴ Thank you very much for your assistance in this matter. I look forward to your response.

Sincerely,

Daniel B. Tilley

cc: David Koperski, School Board Attorney, Koperskid@pcsb.org

³ That Title IX prohibits gender stereotyping has also been recognized by the United States Department of Education. *See* “Dear Colleague” Letter of Russlynn Ali, Ass’t Sec’y for Civil Rights (Oct. 26, 2010), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

⁴ You may find model district policies at this link:

<http://transequality.org/Resources/Model%20District%20Trans%20and%20GNC%20Policy%20FINAL.pdf>



ADMINISTRATION BUILDING

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Michael A. Grego, Ed.D.

August 28, 2013

Mr. Daniel B. Tilley
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Via U.S. Mail and E-mail to: dtilley@aclufi.org

Dear Mr. Tilley:

I am in receipt of your August 22, 2013, letter, wherein you state you are writing on behalf of post-secondary student Alex Wilson. The District appreciates your input and can affirm that Pinellas County Schools respects all state and federal laws, as well as its own policies, regarding anti-discrimination. Our internal anti-discrimination policies include School Board Policies 2260, 5501.01, 5517, and 5517.01, all of which may be found on our website, www.pcsb.org. Policy 5517 provides a procedure for students, parents, employees, and others to file a complaint with our compliance officer if they have experienced unlawful harassment or discrimination. Policy 5501.01 discusses the rights of post-secondary students.

I have directed staff to review the facts of this matter and provide appropriate accommodations, which may include creating one or more unisex restrooms, which was an option suggested by Alex in a recent news article. I have also spoken with staff regarding the initial response to this situation. We will continue to take the appropriate actions to respect the applicable laws and policies.

Sincerely,

Michael A. Grego, Ed.D.
Superintendent

cc: David Koperski, School Board Attorney