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May 13, 2016
via fax to 202-401-0920

Office of Management
Office of the Chief Privacy Officer
U.S. Department of Education
400 Maryland Avenue, SW, LBJ 2E320
Washington, D.C. 20202-4536

Re: FREEDOM OF INFORMATION ACT (FOIA) REQUEST
of Public Advocate of the United States

Dear FOIA Public Liaison:

We represent Public Advocate of the United States (“PA”), and submit this Freedom of Information Act (“FOIA”) request on its behalf.

PA is a nonprofit educational organization, and is exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code of 1986. PA’s tax-exempt mission and purposes include education and litigation to protect the family, traditional values, civil liberties, including, but not limited to, freedoms and rights guaranteed by the U.S. Constitution, and proper interpretation of our federal and state constitutions, statutes, and regulations. PA’s principal office is located at 5613 Leesburg Pike #17, Falls Church, Virginia 22041.

Record Request

On May 13, 2016, a joint guidance letter was issued by the U.S. Department of Justice (“DOJ”) and the U.S. Department of Education (“DOE”) stating that it interprets Title IX as treating “a student’s gender identity as the student’s sex for purposes of Title IX and its implementing regulations.” Furthermore, all schools receiving federal funds must do so as well. *See* Dear Colleague Letter: Transgender Students.¹

¹ <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

The guidance letter represents that it was issued in response to a growing number of requests for such guidance, stating:

In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. [Guidance letter at 1.]

Furthermore, the DOE's blog² refers a "growing chorus of educators, parents, and students around the country" seeking this guidance, and specifically cites a call by the National Association of Secondary School Principals for the DOE to release guidance and best practices. See NASSP [draft policy statement](#).

The guidance letter also represents that "[t]his guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations."

Pursuant to the FOIA, 5 U.S.C. § 552, and DOE's implementing regulations, 34 C.F.R. §§ 5.1, *et seq.*, we hereby request copies of the following records:

- All records including letters, emails, petitions, etc. received by the DOE sent by parents, teachers, principals, and school superintendents containing questions about civil rights protections for transgender students, from January 1, 2013 to the date of this request, May 13, 2016.
- All records, including memoranda, publications, ruling letters, guidance letters, opinion letters, etc. prepared by the DOE which set out the requirements and legal obligations of "covered entities" (including schools) to transgender students, including any relevant definitions of terms, rules, and policy determinations, that existed before the date of the guidance letter (May 13, 2016).

Applicable Policies

In making this request to the Department of Education, we want to call your special attention to the message of President Obama, in his January 21, 2009 Memorandum for the Heads of Executive Departments and Agencies, and the President's following directive:

² <http://blog.ed.gov/2016/05/helping-schools-ensure-the-civil-rights-of-transgender-students/>.

The Freedom of Information Act should be administered with a clear **presumption**: In the face of doubt, **openness** prevails.... [i]n responding to requests under the FOIA, executive branch agencies ... should act **promptly** and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a **presumption in favor of disclosure**, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. [74 *Fed. Reg.* 4683-84 (Jan. 26, 2009) (emphasis added).³]

In accordance with this Presidential directive, we look forward to the Department of Education's processing this FOIA request "promptly," and with a "presumption in favor of disclosure." *See also* Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies (March 19, 2009)⁴ (issued pursuant to the President's January 21, 2009 FOIA Memorandum, underscoring our nation's fundamental commitment to open government).

Instructions

In an effort to simplify this request and avoid any possible confusion, the following instructions clarify and govern this FOIA request:

1. "Records," as used herein, means and includes, without limitation, any information that is an agency record subject to the requirements of the Freedom of Information Act, in any format, including in electronic format.
2. If an exemption is claimed with respect to a particular record, please state particularly the exemption claimed and the reason for claiming it. Please provide any part or parts of such record for which an exemption is not claimed, along with a general description of the part withheld.
3. If DOE is aware of the existence of records sought by this request but is not in the possession of those records, please state specifically what person(s) or agency(ies) have possession of those records.

³ http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/.

⁴ <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>.

Fee Waiver Request

We request that the search, review, and copying fees be waived as provided under section 5 U.S.C. § 552(a)(4)(A) and 34 C.F.R. § 5.33. PA is a nonprofit educational organization seeking the requested documents to educate the public on a matter of great public importance. The fees should be waived because release of the requested documents is in the public interest, and the requested information is likely to contribute significantly to public understanding of the operations or activities of the government.

The release of the requested documents is not primarily for any commercial interest or purpose, including any commercial interest of PA. PA intends to disseminate to the general public, free of charge, any important information it obtains as a result of this request.

If PA's waiver request is denied, we would appreciate an estimate of the costs involved in procuring any of the requested documents if such costs exceed \$100. If the costs do not exceed \$100, however, we do not need an estimate, and we will guarantee payment.

Prompt Handling Requested

Whether and how Title IX and implementing regulations applies transgender students is a public policy issue of great importance to all Americans. The May 13, 2016 guidance letter was issued without any change to the law by Congress or the regulations by the Department of Education. These factors lead us to request that the 20-day response time imposed by 34 C.F.R. § 5.21(c) be adhered to strictly. Thank you for your prompt attention to this request.

Sincerely yours,



William J. Olson

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cc: Public Advocate of the United States