

**Senior Counselor to the Assistant Attorney General for the Civil Rights Division
Jocelyn Samuels Speaks Before the U.S. Commission on Civil Rights**

Washington ~ Friday, May 13, 2011

Good morning. Thank you for inviting the Civil Rights Division of the Department of Justice to testify today about our efforts to address harassment in schools.

Our nation has long considered education to be a critical key to opportunity, prosperity and success. A child must be able to attend school without facing harassment or discrimination. The Civil Rights Division and the entire Obama Administration have been deeply committed to promoting safe and inclusive educational environments for all children. Addressing harassment in our nation's schools is a top priority.

Harassment can have a profound and longstanding effect on our children and youth. We have seen the dire consequences when a student who has been harassed feels he or she has nowhere to turn. In the Civil Rights Division, we see harassment of students with disabilities, harassment because of the color of a student's skin and harassment based on the language that a student speaks. We see harassment of girls and boys who don't meet their peers' stereotypes of how a girl or boy is supposed to act. We see students taunted because of their religion, including Muslim students who are the youngest victims of the persistent post 9/11 backlash.

Harassment and bullying of students in our nation's schools is certainly not a new phenomenon. Concerns about the impact that harassment and bullying can have on the educational environment and the health and well-being of students are longstanding. The Civil Rights Division has sought to address those concerns through its involvement in harassment cases through numerous administrations, including the Supreme Court's seminal decisions in *Gebser* and *Davis*.

As a matter of policy and practice, school districts have a responsibility to stop bullying and harassment whenever it happens. When harassment occurs because of a student's race, color, religion, national origin, disability or sex – including harassment based on sex stereotypes – the Department of Justice has the authority to take action if school districts do not.

The Civil Rights Division of the Justice Department enforces the Equal Protection Clause and numerous federal laws that protect students from harassment or discrimination, including Title IV of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, national origin, sex, and religion in public schools and institutions of higher learning; Titles II and III of the Americans with Disabilities Act, which address discrimination and harassment on the basis of disability; and the Equal Educational Opportunities Act of 1974 which, among other things, requires states and school districts to provide English Language Learner (ELL)

students with appropriate services to overcome language barriers. The Division also plays a significant role in enforcing Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin by recipients of federal funds, Title IX of the Educational Amendments of 1972 which prohibits discrimination on the basis of sex by educational programs and activities conducted by recipients of federal funds, and Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act, both of which address discrimination and harassment based on disability. The Justice Department can investigate complaints under these statutes upon referral from the Department of Education or another federal agency, and can intervene in lawsuits that are filed by private parties.

Under Title IX, federal courts and the Department of Education have recognized that discrimination based on nonconformity with gender stereotypes is a form of sex discrimination actionable under Title IX. In 2001, OCR issued Title IX guidance stating that “[g]ender based harassment, including that predicated on sex-stereotyping is covered under Title IX.” The October 2010 Dear Colleague Letter on Harassment and Bullying from the Department of Education reminded school districts that discrimination on the basis of nonconformity with sex stereotypes, including students “exhibiting what is perceived as a stereotypical characteristic for their sex, or . . . failing to conform to stereotypical notions of masculinity and femininity,” is a form of sex discrimination that can give rise to Title IX liability. As reflected in the materials we have provided to you, the Civil Rights Division has been involved in several cases in which Title IX claims were brought by students alleging harassment on the basis of nonconformity with gender stereotypes.

Before I continue, I want to provide some background and context to the submissions made by the Civil Rights Division and the testimony I am presenting today. The Educational Opportunities Section of the Civil Rights Division, or EOS as it is called, is comprised of approximately 20 attorneys. EOS receives complaints on a range of educational issues through a number of formal and informal avenues, ranging from complaints filed in court to letters or calls from parents, concerned citizens, and congressional representatives. Of these complaints, as well as other potential matters identified through the Division’s monitoring efforts, collaboration with the Department of Education, and other means, EOS has the resources to pursue only a limited number for further inquiry. EOS makes every effort to open those matters for which meaningful relief can be obtained or which involve interpretations of significant issues of law and is conscientious to avoid the expenditure of government funds on complaints that are more appropriately addressed by other federal or state agencies, private counsel, or advocacy organizations.

EOS does not track all of the complaints it receives; rather, it tracks only those complaints that are opened for further inquiry, as just described. For that reason, the Department's responses regarding the number of complaints EOS receives related to inter-student violence and the nature of those complaints only reflect the much more limited number of investigations opened and pursued by the Section. In addition, the Division's responses are limited to matters related to harassment of students protected by the statutes pursuant to which EOS has jurisdiction. For example, complaints that students are harassed based on income status, weight, personality disputes with a teacher, hair color, or because the student simply isn't friends with certain students – ways that students are unfairly targeted and bullied everyday – fall outside of our jurisdiction. In sum, the number of investigations opened does not reflect the larger number of complaints EOS receives or the prevalence of bullying and harassment in schools.

I would particularly like to address today the bullying and harassment of students who are, or are perceived to be, LGBT or gender non-conforming, which is a longstanding and widespread problem in public schools. An October 2010 report by the Williams Institute at the UCLA School of Law found that over 85% of LGBT students report being harassed because of their sexual or gender identity and that the suicide rate for LGBT students continues to be 3-4 times higher than that of their straight counterparts. And these statistics translate into individual cases with truly tragic consequences. In 2010, this nation witnessed a series of suicides by young students across the country who had been bullied in school, including Seth Walsh, a 13-year-old student in California; Asher Brown, a 12-year-old student in Texas; and Ty Field, an 11-year-old student in Oklahoma.

Schools can play a vital role in addressing this issue. Indeed, proactive school efforts to prevent harassment and bullying and respond when it occurs can have significant effects in limiting the repercussions that those subject to harassment all too frequently suffer. For example, a recent study measured the suicide risk of lesbian, gay, and bisexual students and found that the risk was 20% lower in schools with an LGBT "supportive environment," that includes a gay-straight alliance and non-discrimination or anti-bullying policies that include specific protections for lesbian, gay, and bisexual students. We encourage schools to take proactive measures to address harassment and bullying in school and to ensure adequate protection for all students.

When a school fails to take appropriate steps to end harassment and ensure that it does not recur, the Civil Rights Division is prepared to take enforcement action within our existing authority. We have long demonstrated a commitment to using our enforcement authority to protect the rights of students to learn in an environment that is free from harassment.

The complaint alleged severe and pervasive harassment of Somali-American students, culminating in a fight in November 2009, involving 11 white and Somali-American students.

Evidence gathered during an extensive investigation showed that the district disciplined only the Somali-American students involved in the November 2009 incident and that the district's policies, procedures and trainings were not adequately addressing harassment against Somali-American students. The settlement requires the district to, among other things, issue an anti-harassment statement to all district students, parents and staff; train all district faculty, staff and students on discrimination and harassment; meet with Somali students to discuss their concerns about harassment; and establish a working group of district personnel, students and parents to make recommendations to the district regarding the effectiveness of the district's anti-harassment program.

Late last year, the Division reached a settlement agreement with the Philadelphia School District to address severe and pervasive harassment of Asian-American students at South Philadelphia High School. After receiving a complaint from the Asian American Legal Defense and Education Fund on behalf of Asian-American students at the school, the Division conducted an extensive investigation into allegations of repeated harassment, which culminated in a December 2009 attack on Asian-American students. More than a dozen Asian-American students were sent to the emergency room as a result of the attack.

The settlement agreement with the school district includes provisions for the District to, among other things, retain an expert consultant in the area of harassment and discrimination to review the district's policies and procedures concerning harassment; develop and implement a comprehensive plan for preventing and addressing student-on-student harassment at the school; and train faculty, staff and students on discrimination and harassment based on race, color, and/or national origin and to increase multi-cultural awareness.

In Philadelphia as in Owatonna, the Division was able to secure comprehensive, district-wide relief.

In 2010, the Division also opened a Title IX investigation into discrimination based on sex stereotypes in Mohawk, New York. For two and a half years, an openly gay teenager was subject to severe and pervasive student-on-student harassment because he failed to conform to gender stereotypes. The harassment escalated from derogatory name-calling to physical threats and violence. The student's grades suffered. He had multiple absences because he did not feel safe at school, and he dropped one of his favorite courses to avoid one of his harassers. The School District knew of the harassment, and the student alleged that the district was deliberately indifferent in its failure to take action – neither fully investigating the allegations, nor following its anti-harassment policies and procedures. While the jurisdiction of the Civil Rights Division does not currently extend to harassment based on sexual orientation, it does provide authority to investigate and seek redress in matters involving harassment based on sex, including sex stereotypes, of all students, including LGBT students. Based on this authority, the Division intervened in the case, which was resolved by a settlement agreement that requires the Mohawk Central School District to, among other things, retain expert consultants in the area of harassment

and discrimination based on sex, gender identity, gender expression, and sexual orientation to review the District's policies and procedures and to conduct annual trainings; and develop and implement a comprehensive plan for disseminating the District's harassment and discrimination policies and procedures.

The Division also submitted an amicus "friend of the court" brief in *Pratt v. Indian River Central School District*, another case involving allegations of harassment based on sex stereotypes. In the brief, the Division reiterated that harassment based on sex stereotyping is a legally cognizable claim under Title IX and the Equal Protection Clause; that sexual orientation harassment does not preclude a harassment claim based on non-conformity to sex stereotypes; and that a hostile environment claim in primary and secondary schools can span classes, grades and schools.

The Department also continues to be involved in cases involving sexual harassment, including sexual violence. Last year, a settlement was reached in a case in which we intervened involving a nine-year-old boy with autism who was raped by another student with disabilities on a special needs school bus in the Nashville Public School District. There was a well-documented history of the perpetrator sexually harassing other students and the victim being victimized by other students. While aware of these facts, the District placed these two students together on the same bus without a bus monitor. The victim developed severe post-traumatic stress disorder in the aftermath of the assault and was subsequently institutionalized. Working with counsel for the student, we reached a settlement with the school district requiring the district to pay monetary damages to the student and entered into a comprehensive consent decree that required Nashville to take substantial steps to enhance the security of students with disabilities in school transport.

In each of these cases, whether they involve one student or many, students were deprived of their ability to go to school and be free from harassment. All of these cases should serve as a reminder to school administrators that they have a responsibility to provide a safe and inclusive environment for every student, and that they will be held accountable if they fail to do so.

Outside of litigation, the Department is broadly engaged in efforts to combat harassment and bullying in schools. For example, the Civil Rights Division is participating in the Interagency Bullying Working Group, a coordinated effort of numerous federal agencies tasked with developing a national strategy to end bullying in schools. The Division also worked closely with OCR on the November 2010 Dear Colleague Letter addressing bullying and harassment in schools. Division leaders and staff have met with advocates in the Muslim, South Asian, Arab, and Sikh communities; LGBT and disability-rights advocacy organizations, among other groups, to discuss pervasive bullying and harassment occurring in schools across the country.

Division leaders have visited schools in different parts of the country, speaking to middle and high school students about the importance of contributing to a school environment in which all students feel safe, regardless of their race, color, national origin, religion, disability, sex, sexual

orientation, gender identity or gender non-conformity. In addition, the Division participated in the “It Gets Better” campaign that was launched in response to the series of reported suicides by LGBT youth, and produced a video that provides a resource to students who are harassed or bullied, with information on the Department’s enforcement authority and providing contact information for EOS. Overall, the Division’s outreach efforts seek to assist parents, students and community and advocacy groups to understand the scope of the Division’s efforts with regard to harassment and bullying, the tools the Department has available to address harassment, and opportunities for collaboration between the Department and community members.

President Obama has made clear his commitment to protecting children from bullying and harassment of all kinds – he and First Lady Michelle Obama recently convened a conference at the White House to bring students, parents, educators and other stakeholders together to talk about bullying prevention. These efforts are ever more important than ever to ensure our nation’s children can access the opportunities that will allow them to thrive.

The Justice Department is committed to protecting the civil rights of children, including the right to go to school and receive an education free from harassment and discrimination.

Thank you for the opportunity to testify. I look forward to your questions.