

May 1, 2015

DIRECTIVE: JOB CORPS PROGRAM INSTRUCTION NOTICE NO. 14-31

TO: ALL JOB CORPS NATIONAL OFFICE STAFF
 ALL JOB CORPS REGIONAL OFFICE STAFF
 ALL JOB CORPS CENTER DIRECTORS
 ALL JOB CORPS CENTER OPERATORS
 ALL NATIONAL TRAINING AND SUPPORT CONTRACTORS
 ALL OUTREACH, ADMISSIONS, AND CTS CONTRACTORS
 ALL EQUAL OPPORTUNITY OFFICERS

FROM: LENITA JACOBS-SIMMONS
 National Director
 Office of Job Corps

SUBJECT: Ensuring Equal Access for Transgender Applicants and Students to the
 Job Corps Program

1. Purpose. The Job Corps National Office, in consultation with the Civil Rights Center of the Department of Labor, has developed this guidance to ensure equal access and opportunity for transgender applicants and students in the Job Corps program. Federal civil rights laws and requirements applicable to the Job Corps program provide protection from discrimination for transgender individuals.¹ Accordingly, staff at Job Corps centers should treat transgender individuals with the same respect as any other applicant or student, provide equal opportunity, and ensure a safe and productive environment for all Job Corps youth. This notice is intended to inform students and staff of nondiscrimination expectations and a zero tolerance policy regarding discrimination and harassment in the Job Corps setting.

2. Definitions.

- “Transgender” refers to people whose gender identity, expression, or behavior is different from that typically associated with their assigned sex at birth. Transgender is a broad term and an acceptable descriptive term for non-transgender people to use. “Trans” is shorthand for “transgender.” (Note: “Transgender” is correctly used as an adjective, not a noun; thus “transgender people” is appropriate, but “transgenders” is often viewed as disrespectful.)

¹ In addition, federal executive orders prohibit discrimination on the bases of both sexual orientation and gender identity in the civilian federal workforce and by federal contractors.

- “Gender identity” refers to an individual’s internal sense of being male, female, or something else. Since gender identity is internal, one’s gender identity is not necessarily visible to others.
- “Gender expression” refers to how a person represents or expresses one’s gender identity to others, often through behavior, clothing, hairstyles, voice, and/or body characteristics.
- “Gender non-conforming” refers to individuals whose gender expression is different from societal expectations related to gender.
- “Transition” refers to the time when a person begins living as the gender with which they identify rather than the gender they were assigned at birth, which often includes changing one’s first name and dressing and grooming differently. Transitioning may or may not also include medical and legal aspects, such as taking hormones, having surgery, or changing identity documents (e.g., driver’s license, Social Security record) to reflect one’s gender identity. Medical and legal steps are often difficult for people to afford.
- “Transgender woman” refers to a person whose assigned sex at birth was male but whose gender identity is female and who lives as a woman.
- “Transgender man” refers to a person whose assigned sex at birth was female but whose gender identity is male and who lives as a man.
- “Sex reassignment surgery” refers to surgical procedures that change one’s body to better reflect a person’s gender identity. Contrary to popular belief, there is not one surgery; in fact there are many different surgeries. These surgeries are medically necessary for some people; however, not all people want, need, or can have surgery as part of their transition. “Sex change surgery” is considered a derogatory term by many.²

3. Background. There are applicants to and students in the Job Corps program who are transgender. Transgender applicants and students in Job Corps may be at different stages of their transitions. Some may dress and express themselves consistent with their gender identity; some may be receiving hormone therapy or have undergone sex reassignment surgery; some may prefer to be called by names to which they have not yet made a legal change.

A transgender applicant or student may need support or individual arrangements while completing his/her Job Corps training. Not all transgender individuals will follow the same pattern, but they all are entitled to the same considerations. These individuals, like all individuals, should be treated with dignity and respect.

4. Ensuring Transgender Applicants and Students Equal Access to the Job Corps Program. In order to protect the civil rights of a transgender Job Corps applicant or student, arrangements, in the areas set forth below, should be made at the Job Corps center for the applicant or student when appropriate. If Job Corps staff is aware of an applicant’s transgender status, they should meet with the applicant prior to entry, as appropriate, to establish a plan that addresses the areas below.

² National Center for Transgender Equality, Transgender Terminology (2014), available at http://transequality.org/sites/default/files/docs/resources/TransTerminology_2014.pdf.

Names, Pronouns, and Records

A transgender student may wish to use a name and/or pronoun that corresponds to his/her gender identity and not the name and gender currently listed in the student's identification documents.

Job Corps centers should use the student's desired name and respective pronoun (e.g., him, her, etc.) in all interactions with the student, including in the dorms, academic and career technical classrooms, and all other center departments and areas (health and wellness, recreation, cafeteria, etc.).

A permanent student record that includes the student's legal name and legal gender shall be maintained. However, to the extent that a student's legal name and gender are not legally required to be used on other records and documents, Job Corps center staff shall use the name and gender preferred by the student. Job Corps center staff will change a student's official record to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order, or through amendment of state- or federally-issued identification. In situations where center staff or administrators are required by law to use or to report a transgender student's legal name or gender, such as for purposes of standardized testing or official records, staff and administrators shall adopt practices to avoid the inadvertent disclosure of that legal name beyond the explicit purpose for which it is required, and to no other person or audience.

Dress and Appearance

A transgender student may wish to wear the clothing, hairstyle, and/or other expressions of his/her gender identity (e.g., the attire generally associated with the gender with which he/she identifies).

All Job Corps students must wear the appropriate attire for their trade. Transgender students should be allowed to dress in attire consistent with their gender identity as long as it is compliant with Job Corps dress codes. For example, a student assigned as male at birth, but whose gender identity is female (i.e., a transgender woman), should be allowed to dress consistently with other women in the trade.

Job Corps staff should review dress and appearance codes to ensure that (1) any requirement that applies to only one gender is not significantly more difficult to comply with than are requirements applicable only to the other gender, and (2) the policies do not demonstrate any discriminatory or sex-stereotypical intent. Dress and appearance codes that differ based on gender must have a legitimate, nondiscriminatory rationale.

Housing, Restroom, and Shower Access

Upon a transgender student's enrollment in Job Corps, a discussion should take place between the student and relevant Job Corps staff regarding appropriate housing options, taking into consideration the student's safety and the student's preference. The primary and

overriding factor in assigning housing should be the student's gender identity. Job Corps staff should make every effort to allow the transgender student to live in their dorm of preference.

When a transgender student identifies as a particular gender, dormitory assignments should be based on that gender, regardless of whether the student has had any gender-related surgery, hormone therapy, or other medical procedures.

If a student is currently transitioning or is presenting as the gender with which they identify only in some settings, it is important for Job Corps staff to talk confidentially with the transgender student about his or her privacy and safety needs to determine where he or she will feel safest. For transgender students who do not identify as male or female, again, the housing preference of the student should be discussed and respected, whenever possible.

In some cases, a transgender student may feel safest being placed in a specially-designated room (separate from gender-designated housing), either alone or with a transgender-friendly roommate, if such a room can be provided. However, this decision should be made in collaboration with the transgender student. Transgender students should not be forced to room separately from other students, unless they or their parents or guardians specifically ask for such an arrangement.

Concerns of staff, parents, and other students may also need to be considered and addressed, including through the provision to staff of comprehensive training on transgender-related issues. However, a paramount consideration in making living assignments must be all students' safety. It should be noted that in many overnight residential facilities outside Job Corps, transgender women who have been required to sleep in the same room with men have reported that the male residents have harassed them, sexually propositioned them, and sometimes assaulted them. The possible risk of assault and harassment of transgender students is of significantly greater concern than the desires of staff and parents who would prefer not to have transgender students live with non-transgender students.

Furthermore, most courts have concluded that an entity's desire to cater to the perceived biases of its customers, employees, or other third parties is not a defense for unlawful discrimination. The same principle applies to discrimination against transgender persons.³

These guidelines also apply to the use of other gender-segregated facilities, such as locker rooms, showers, and bathrooms. Centers should not assign transgender students to use gender-specific facilities based solely on their assigned sex at birth but, rather, should engage in the process described above to arrive at a solution that respects their safety and privacy of students. Non-transgender students who object to using such facilities at the same time as transgender students may be advised to use a single-use or standalone restroom or shower room/stall, if available. These options may also be offered to transgender students, so long as the available facilities are located within a reasonable

³ See e.g., *Schroer v. Billington*, 577 F. Supp. 2d 293, 302 (D.D.C. 2008) (“Deference to the real or presumed biases of others is discrimination, no less than if an employer acts on behalf of his own prejudices.”).

distance to dormitories and classrooms, but transgender students may not be required to use them.

Disclosure of Transgender Status

A student's status as transgender should be treated with sensitivity and confidentiality, just as one would treat any other deeply personal life experience or medical issue. A transgender student does not have to disclose his/her status to anyone at Job Corps. Additionally, the Job Corps program may not inform others in Job Corps about the student's status, nor should Job Corps inform the student's parents or other parents about the student's status.

A transgender student who has transitioned before arriving at a Job Corps program may or may not want to discuss his or her transgender status with others. Job Corps staff should respect the wishes of the individual.

If the transgender applicant or student indicates that questions from or discussions with other Job Corps students and staff are welcome, staff should refer questions regarding transgender status to the student. Instruct other students and employees that any questions they ask or discussions they initiate about the topic must be respectful in tone and appropriate in content.

If the transgender student wishes to keep information about the details of his or her transition as private as possible, Job Corps staff should respect those wishes. For example, Job Corps staff should not ask the transgender student questions about his or her medical status or plans unless such questions are necessary to address issues that may arise with the transgender student's health or medical treatment. In addition, remember that medical information about individual students, including information related to a student's transgender status and transition, is protected by federal law, and disclosure should be limited.

In either case, Job Corps staff should not engage, or permit Job Corps students to engage, in gossip or rumor-spreading about the transgender student or about the student's personal situation or medical treatment.

If a student will be transitioning while enrolled in the Job Corps program, the topic will probably need to be discussed with staff and students at some point. The transitioning student will likely wish to disclose information related to the transition, such as the fact that he or she will be going by a new name and using a new pronoun. If possible, this process should be discussed effectively with the student before it begins, and staff should comply with the individual's wishes in determining when and how this information is divulged.

A discussion should take place with the transgender student about the option to disclose his/her situation to any potential roommates to make sure the transgender student does not have any concerns and to ensure a smooth move into the dormitory for everyone. If the transgender student chooses to disclose his or her status, he or she should be allowed to

decide whether to have the discussion directly with the potential roommate or to allow staff to have the discussion.

Entrance Physical Examinations and Medical Issues

All Job Corps students are required to undergo an entrance physical examination within 14 days after entry. Medical staff must follow best practice protocol based upon the medical needs of the student, guided in part by the student's identity and physiology. For additional guidance, medical staff may wish to consult transgender-specific clinical guidelines, such as the primary care protocol published by the Center of Excellence for Transgender Health at the University of California, San Francisco.⁴

Most transgender students in the Job Corps age group will not have undergone any form of sex reassignment surgery, but some may have initiated hormone therapy. It is now commonly accepted that hormone therapy is a medically necessary intervention for many transgender individuals.⁵ Wellness staff should be sensitive and informed about the physical and mental health care needs of transgender students and provide appropriate referrals in the community to obtain this care, if needed.

Transgender students will have access to the same medical and health care as all other students enrolled in Job Corps and will be treated with equal respect in provision of access to that medical and health care. For any student who, prior to enrolling in Job Corps, is under a regimen of medical care, Job Corps center staff will facilitate that student's access to prescribed medication and off-center medical care. In the case of transgender students, that regimen of medical care may include hormone therapy.

As is the case with any Job Corps student, if a transgender student seeks to begin a course of medical treatment, such as hormone therapy and/or surgery, while enrolled in Job Corps, Job Corps shall assist the student in accessing offsite medical care for this purpose, including by providing transportation. Job Corps staff may approve a student's request to be transported by a friend, partner, or family member rather than Job Corps program staff.

Like any other student with a medical condition, a transgender student who is no longer able to participate in Job Corps due to a medical condition should be considered for Medical Separation with Reinstatement under the Policy and Requirements Handbook, 6.12, "Health Administration," R11 "Medical Separations." However, not all transgender students who begin a regimen of medical care will require medical separation.

⁴ Center of Excellence for Transgender Health, Primary Care Protocol for Transgender Patient Care (2011), available at <http://transhealth.ucsf.edu/trans?page=protocol-00-00>.

⁵ World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People (2012), available at http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf.

Moving from Job Corps to the Workforce

Transgender students preparing for entry into the workforce often face additional career planning challenges related to their gender identity, including potential workplace discrimination. The workplace and the geographic location of employment can be quite different in terms of support for and acceptance of transgender employees. Career Transition Counselors may need additional training to understand how transgender students can make the most of the resources in their local area, in order to access the most employment opportunities possible.

Several federal courts have held within the past decade that discrimination in employment against a transgender employee is a form of sex discrimination under Title VII of the Civil Rights Act of 1964.⁶ After Job Corps staff has received training on transgender-related issues as described in this notice, the relationship that the Job Corps program has built with employers in the community can provide excellent opportunities to educate those employers about the rights of transgender applicants and employees.⁷

Concern that an employer might be dissuaded from interacting with a Job Corps program because of the participation or visibility of transgender students is not an adequate reason for the Job Corps program to fail to adopt policies ensuring all students' safety and inclusion in the program. Students should not be discouraged from presenting themselves in a manner consistent with their gender identity out of a concern that an employer might be uncomfortable with their identity. Indeed, discouragement itself may be a form of discrimination, in violation of Section 188 of the Workforce Investment Act (on July 1, 2015 replaced by the Workforce Investment Opportunity Act) and its implementing regulations, which apply to Job Corps programs.⁸

It is also recommended that Job Corps program staff become familiar with the state and local laws that apply to the jurisdiction in which the Job Corps program or contractor operates. A number of states and localities now explicitly prohibit discrimination against transgender job applicants and employees.⁹

If a transgender student believes that he or she is being discriminated against by an employer to which he or she is applying for a permanent job, it is recommended that Job

⁶ *Glenn v. Brumby*, 724 F. Supp. 2d 1284 (N.D. Ga. 2010), *aff'd*, 663 F.3d 1312 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008); *see also Macy v. Holder*, EEOC Appeal No. 0120120821 (April 20, 2012); Memorandum from Attorney General Eric Holder to United States Attorneys and Heads of Department Components (Dec. 15, 2014) (citing EEOC's decision in *Macy v. Holder* as support for DOJ's position that "[t]he most straightforward reading of Title VII is that discrimination 'because of . . . sex' includes discrimination because an employee's gender identification is as a member of a particular sex, or because the employee is transitioning, or has transitioned, to another sex").

⁷ These rights stem in part from the expansion of Executive Order 11246, by Executive Order 13672, to include the prohibition of federal contractors and the federal government from discriminating on the basis of gender identity. Additionally, 18 states plus the District of Columbia prohibit discrimination based on gender identity, and a large and growing number of private corporations have also adopted similar non-discrimination policies.

⁸ 29 CFR 37.6(c)(1).

⁹ *See* Movement Advancement Project, Local Employment Non-Discrimination Ordinances, http://www.lgbtmap.org/equality-maps/non_discrimination_ordinances (last visited January 13, 2015).

Corps staff provide the student with information about how to file a complaint with the applicable civil rights enforcement agency. That agency may be the U.S. Equal Employment Opportunity Commission (EEOC); another federal agency, such as DOL's own Office of Federal Contract Compliance Programs (OFCCP), which prohibits discrimination by covered federal contractors based on gender identity;¹⁰ or a state or local agency. Information on how to file a complaint with the EEOC may be found at <http://www.eeoc.gov/employees/charge.cfm>. Information on how to file a complaint with the OFCCP may be found at <http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>.

Student and Staff Training

Job Corps students and staff may have varying levels of awareness and sensitivity about transgender individuals and their needs and rights.

To address this, it is necessary to incorporate education about gender identity and gender expression into diversity and equal opportunity compliance training programs for both students and staff. Student trainings can take the form of small, informal discussions in the dorm, or the topic could be included as part of a larger diversity training curriculum. Training of staff is critical, as they will need to model appropriate behavior toward transgender youth.

Webinar schedules for transgender and cultural diversity training are regularly posted on the Job Corps.Gov website. Technical assistance is readily available through the National Office Health and Wellness Unit. The U.S. Department of Labor's Civil Rights Center (CRC) is also available to conduct trainings.

Students and staff should be made aware of the complaint process available through the CRC. If a transgender student believes that he or she is being discriminated against by a Job Corps center or by an employer affiliated with the center, he or she may submit a complaint to the following:

Director
Civil Rights Center
ATTENTION: Office of External Enforcement
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-4123
Washington, DC 20210

Complaints can also be faxed to (202) 693-6505 or emailed to CRCEXternalComplaints@dol.gov. Directions for filing complaints are available at <http://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>.

¹⁰ U.S. Department of Labor, Office of Federal Contract Compliance Programs, Directive 2014-02, Gender Identity and Sex Discrimination (August 19, 2014), available at http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html.

5. Additional Resources.

- **DOL Policies on Gender Identity: Rights and Responsibilities**
<http://www.dol.gov/oasam/programs/crc/20130712GenderIdentity.htm>
- **Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace**
<http://www.opm.gov/diversity/Transgender/Guidance.asp>
- **Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression**
<http://www.apa.org/topics/lgbt/transgender.aspx>
- **Know Your Rights — Transgender People and the Law**
<https://www.aclu.org/know-your-rights/transgender-people-and-law>

6. Action. Addressees are to ensure that this Program Instruction Notice is distributed to all appropriate staff and that the training recommended in this document is conducted for Job Corps staff, including when other nondiscrimination and/or equal opportunity training is done.

7. Expiration Date. Until superseded.

8. Inquiries. Inquiries should be directed to Carol Abnathy by phone at (202) 693-3283 or by e-mail at abnathy.carol@dol.gov or to Johnetta Davis by phone at (202) 693-8010 or by e-mail at davis.johnetta@dol.gov. Inquiries about the application of civil rights laws should be addressed to CRC by phone at (202) 693-6500 (voice); by relay at (800) 877-8339 (TTY/TDD) or (877) 709-5797 or myfedvrs.tv (video); or by e-mail at CivilRightsCenter@dol.gov. Complaints alleging discrimination based on transgender status may be filed with CRC by postal mail, e-mail, or fax, addressed to Director, Civil Rights Center, ATTENTION: Office of External Enforcement, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, DC 20210, CRCEXternalComplaints@dol.gov, (202) 693-6505 (fax).