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The Trump Administration Won't Help Transgender Students Who Are Forced To Use The Wrong Bathroom

Transgender students are filing discrimination complaints with the Office for Civil Rights, but the office says these issues fall outside its purview.

By Rebecca Klein

In Texas, a transgender teenager said his high school discriminated against him for almost two years. He was not allowed to use the bathroom that corresponded with his gender identity. When he traveled overnight with one of the school's teams, he wasn't allowed to room with his male peers, he alleged.

But Donald Trump's Department of Education did not think it could help this student.

The teenager's case is one of at least three involving transgender students' experiences navigating school bathrooms or gender-specific sports teams that the Department of Education's Office for Civil Rights has dismissed in the past several months, with the explanation that these issues do not fall under its jurisdiction, according to documents obtained by HuffPost and a source familiar with the matter.

The Trump administration's view of these cases diverges sharply from that of the Obama administration, which contended that [Title IX](#) — the federal law that deals with sex discrimination — included discrimination based on gender identity. The Obama administration issued guidance holding that schools should allow students to use the facilities that align with their gender identity.

But a month into Trump's presidency, the Department of Justice and Department of Education [rescinded this guidance](#), saying that these issues should be decided at the local level and that the original guidance did not contain enough legal analysis. Since then, it has been unclear [how exactly](#) the Office for Civil Rights, or OCR, would handle these cases. An [internal OCR](#) memo from June directed employees to still take the complaints of transgender students seriously. It said employees may dismiss complaints related to bathroom issues, but it did not specifically direct them to do so.

In June, The Washington Post reported that the [OCR had closed two cases](#) regarding transgender students' use of facilities. HuffPost is reporting for the first time on the existence of three additional cases in which officials specifically said they were not required to deal with this type of discrimination.

In response to the Texas complaint, the OCR sent a letter citing the rescission of the Obama-era guidance as a reason for dismissing the case. The case also contained other allegations outside of the facilities issue that the OCR dismissed for other reasons.

“OCR determined we do not have subject matter jurisdiction over Allegation 1, inasmuch as the alleged discriminatory conduct you described does not raise any prohibitive bases under the civil rights laws OCR enforces,” the OCR’s letter read, per documents obtained by HuffPost.

Advocates for LGBTQ students say that the administration’s behavior is not consistent with a wave of court decisions that have protected the rights of transgender students under Title IX.

“That’s an understanding of Title IX that is inconsistent with a majority of court cases in the last several years,” said Nathan Smith, director of public policy for the GLSEN. “I think what’s important to note is it’s not that the Obama administration came out of the blue to say Title IX now covers transgender students. There’s a wave of court cases from district and circuit courts that have upheld that understanding.”

From January 2017 to January 2018, the Office for Civil Rights received significantly fewer complaints regarding the overall treatment of transgender students than it did from January 2016 to January 2017. The number of complaints filed has dropped about 40 percent, HuffPost has learned through a source familiar with the matter.

Advocates for LGBTQ students say that in the Trump era, transgender students may be more reluctant to file complaints with the Department of Education because they doubt it will help them.

“This is not surprising, but it does seem to me consistent with the idea that students who are facing discrimination, who really are suffering in their ability to get an education, don’t believe that OCR will protect them,” said Harper Jean Tobin, director of policy at the National Center for Transgender Equality.

Complaints do ebb and flow naturally, so it might also be a matter of coincidence that the number complaints for the most recent year have dropped. A spokesperson for the Department of Education did not respond to requests for comment about the number of complaints or the Trump administration’s policy regarding treatment of transgender children.

Previous reporting from Politico confirms that investigators have been working through cases at a faster rate than in the past — and that there has been a sharp increase in dismissals — as a result of a directive from Candice Jackson, the acting assistant secretary for civil rights, to reduce the backlog. Indeed, Jackson directed staff members to focus less on systemic issues and more on individual issues, [the outlet reported](#).

Jackson’s days as acting assistant secretary for civil rights are limited. The administration has nominated [Kenneth Marcus](#), current president and general counsel for a nonprofit Jewish advocacy group Louis D. Brandeis Center for Human Rights Under Law, for the post.

In a written questionnaire from Sen. Patty Murray (D-Wash.), the ranking member on education, Marcus did not say whether or not he thinks transgender students should be able to access facilities that are consistent with their gender identity.

“Title IX prohibits discrimination based on sex,” wrote Marcus. “The question as to whether Title IX provides additional protections to transgender students beyond those described above, and the nature and scope of such protections, is currently being litigated.”

LGBTQ advocates say they’re not optimistic that Marcus will work to protect these students.

“I don’t expect he’ll have the ability to reverse course on this issue in a way that we would love,” said Smith. “I think the administration position on that is backward ... both in logic and the direction of the law.”

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