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Education Department will ignore discrimination complaints from transgender students

Spokeswoman clarifies that transgender students are not entitled to access restrooms matching their gender identity

By John Riley on February 12, 2018

The U.S. Department of Education has confirmed to reporters that it won't pursue any complaints filed by transgender students who are banned from restrooms that match their gender identity.

Under the leadership of anti-LGBTQ Education Secretary Betsy DeVos, the Trump administration has [maintained a rather ambiguous policy](#) regarding civil rights complaints from transgender students.

While the guidance called on the department's Office of Civil Rights to look into situations where transgender students were discriminated against or harassed based on their gender nonconformity, the guidance also hinted — but never explicitly stated — that the office could choose not to pursue claims where a student was banned from a public restroom that did not match their biological sex at birth.

On Thursday, the department cleared up that ambiguity once and for all, taking the position that transgender students are not protected by Title IX's prohibitions on sex discrimination.

A spokeswoman for the Education Department clarified the department's stance to [BuzzFeed](#), stating: "Title IX prohibits discrimination on the basis of sex, not gender identity."

The spokeswoman said that the Office of Civil Rights may choose to investigate other instances of harassment or discrimination that unfairly target transgender students, but that "long-standing regulations provide that separating facilities on the basis of sex is not a form of discrimination prohibited by Title IX."

The Trump administration's now-clarified position flies in the face of federal appeals court decisions out of the 6th and 7th Circuits, which suspended school restroom policies that barred transgender students from restrooms matching their gender identity. In both those cases, the courts found that transgender students in [Ohio](#) and [Wisconsin](#) who sued their respective school districts over being banned from certain restrooms were likely to prevail in proving they were discriminated against under Title IX.

That said, the Trump administration's stance can hardly be thought of as surprising, given its history of opposing transgender rights.

Shortly after taking office, DeVos, working with Attorney General Jeff Sessions, approved a decision to rescind Obama-era guidance ensuring transgender students were treated according to their gender identity.

DeVos has [previously opined](#) that religiously-affiliated schools should be allowed to continue receiving taxpayer money, even if they have policies that actively discriminate against LGBTQ students.

DeVos has also been [criticized by LGBTQ groups](#) for rescinding Obama administration guidelines on sexual assault that some on the political Left feel are biased in favor of the accused over accusers. And last week, DeVos [came under fire from more than 700 parents of transgender children](#), who signed onto a letter condemning her for failing to take appropriate action to ensure that transgender students are not discriminated against.

Despite the predictability of the Department's latest action, LGBTQ advocates slammed its stance on Title IX as wrongheaded, maintaining that discrimination based on gender identity does constitute a form of sex discrimination.

"While civil rights advocates have suspected that the Department of Education was not acting on complaints brought forward by transgender students, reports that these violations are completely being ignored are reprehensible," Sarah Warbelow, legal director for the Human Rights Campaign, said in a statement.

"The department's failure to act conflicts with the law in multiple jurisdictions, including federal circuits, and further emboldens those who seek to discriminate against transgender students," Warbelow continued. "Once again, Secretary DeVos proves she is not interested in protecting transgender students and instead is choosing to advance the dangerous Trump-Pence anti-LGBTQ agenda."

Rebecca Isaacs, the executive director of Equality Federation, said the Trump administration's attacks on LGBTQ people and families "just keep getting more cruel."

"It is unconscionable to tell youth that their complaints of discrimination won't even be heard," Isaacs said in a statement. "Every student in America, including transgender students, should have a fair opportunity to fully participate and succeed in school! ... We will continue working to make sure every school, town, and state is inclusive and provides a level playing field for everybody."

Luis Acosta, the LGBTQ Media Director for the Democratic National Committee called the Education Department's decision "no different" from other past anti-LGBTQ decisions and accused DeVos of "willingly undermining Title IX and turning her back on individuals facing institutional discrimination."

"Despite the ouster of Virginia's 'chief homophobe' by a transgender woman and losing the North Carolina governor's mansion following backlash against the state's 'bathroom bill,'

Republicans haven't learned that their far-right, anti-LGBTQ agenda is out of step with Americans across the country who will hold them accountable in November," Acosta said.

<https://www.metroweekly.com/2018/02/education-department-wont-pursue-discrimination-complaints-transgender-students/>

ThinkProgress, DC, USA

Education Department says transgender student complaints about bathrooms will be rejected

The department officially stated that it would not investigate complaints about trans student discrimination.

Casey Quinlan | Feb 12, 2018, 1:45 pm

The Education Department said it will not investigate complaints from transgender students who have been denied access to bathrooms that correspond with their gender. BuzzFeed News [broke](#) the story on Monday.

The department responded to BuzzFeed's question about whether the department's current position is that bathroom complaints from trans students are not included in Title IX. Title IX is a 1972 civil rights law that says students should not be excluded from participation in, denied benefits of, or be subjected to discrimination in education programs receiving federal assistance.

Liz Hill, a spokesperson for the department responded, "yes, that's what the law says" and maintains that Title IX "prohibits discrimination on the basis of sex, not gender identity."

Transgender students, their families, and advocates for the rights of transgender students have been waiting on further clarity from the department since HuffPost [reported](#) last month that the department has specifically said they don't have to handle three cases about transgender students' experiences with school bathrooms or sports teams. The department also said complaints involving transgender students do not fall under its jurisdiction. Last week, parents of more than 700 students across the country [wrote a letter](#) to Education Secretary Betsy DeVos condemning the department's policy approach toward transgender students, which so far, has been to ignore them.

"People who espouse hateful and transphobic views continue to hold positions of power in schools across the country, and are enabled now more than ever before by the poor example set by the federal government with regard to acceptance and support for all youth," the parents wrote.

A year ago, the department rescinded 2016 guidance from the Obama administration on transgender students' access to bathrooms. The administration's draft letter to schools stated that "School administrators, parents and students have expressed varying views on the legal issues arising in this setting" and "struggled to understand" the 2016 guidance.

The Obama-era guidance said schools should respond promptly to harassment claims when it involved a trans student's gender and that transgender students should be able to access bathrooms and locker rooms and belong to sports teams that match their gender identity. It

also made clear that schools should be aware of a student's gender and can't ask students for a medical diagnosis or treatment before they act accordingly. But nearly half the states [joined](#) two lawsuits challenging protections for transgender students.

Catherine Lhamon, former head of the department's Office for Civil Rights during the Obama administration, tweeted on Monday that the federal government is "further turning its back" on transgender students.

[Catherine E. Lhamon](#)
[✓@CatherineLhamon](#)

Federal government further turning its back on transgender students, abdicating federal enforcement responsibility for civil rights without Congressional authority. Totally inconsistent with the requirement that federal agencies enforce the law as written
[https://www.buzzfeed.com/dominicholden/edu-dept-trans-student-bathrooms ...](https://www.buzzfeed.com/dominicholden/edu-dept-trans-student-bathrooms...)

[11:51 AM - Feb 12, 2018](#)

Lhamon [told](#) BuzzFeed News that the department's response is inconsistent with the courts' interpretation of Title IX. In May, a federal court [ruled](#) that the anti-discrimination law covered trans Americans. In the case of *Whitaker v. Kenosha Unified School District*, the federal appeals court ruled that a trans boy could use the boys' bathroom under Title IX protections.

Harper Jean Tobin, policy director for the National Center for Transgender Equality, released a statement to ThinkProgress over email accusing the department of "ignoring the law — including rulings from two federal appeals courts—in favor of promoting discrimination against children."

Tobin added:

Trans students have stated that they avoid using the restroom all day, or avoid eating and drinking so that they will not have to. The Department appears to be saying it will turn its backs on these students even though courts have specifically said they are protected, forcing them to take the longer and far more costly route of suing in federal court. The Department also leaves students without any reason to have faith that it will help if they are outed and humiliated by school staff misgendering them every day, [or] suspended for following the dress code in a way that matches their gender identity.

<https://thinkprogress.org/education-department-transgender-students-complaints-3422a85e73bd/>