

# Office of Civil Rights Field Instructions Signal Shift in Approach

PUBLISHED ON  
**June 22, 2017**

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It was revealed last week that Acting Assistant Secretary for the [Office of Civil Rights](#) (OCR), Candice E. Jackson, issued instructions to OCR regional directors on June 6, 2017, addressing the processing of complaints in light of recent developments pertaining to enforcement of Title IX. The directive was reportedly distributed to clarify that given the withdrawal of the May 13, 2016 "Dear Colleague" letter, while transgender students may still have valid complaints subject to investigation by OCR related to discrimination, bullying, and harassment, investigators must "evaluate each allegation separately, searching for a permissible jurisdictional basis for OCR to retain and pursue the complaint."

Earlier this year, the Trump administration withdrew prior Title IX guidance issued by the Obama administration that specifically addressed the rights of transgender students, including the use of restroom facilities that correspond with an individual's gender identity. OCR is now directing staff to consider transgender discrimination complaints on a "case-by-case" basis to determine if dismissal is appropriate based solely on "Title IX and its implementing regulations, as interpreted in decisions of federal courts and OCR guidance documents that remain in effect..."

The new directives apply to all OCR complaints currently in evaluation or investigation, as well as newly-filed complaints and will likely have an impact on those schools with open OCR investigations as well as what schools experience in the processing of new complaints. While the instructions note the protections afforded transgender students from discrimination or hostile environments, it signals a clear shift in approach regarding the restroom issue. The instructions provide that "[i]t is permissible, for example, for one allegation in a complaint (such as harassment based on gender stereotypes) to go forward while another allegation (such as denial of access to restrooms based on gender identity) is dismissed."

As for the breadth and depth of OCR complaint investigations moving forward, Jackson indicates that "[e]ffective immediately, there is no mandate that any one type of complaint is automatically treated differently than any other type of complaint with respect to the scope of the investigation, the type or amount of data needed to conduct the investigation, or the amount or type of review or oversight needed over the investigation by headquarters." In what appears to be yet another shift a shift in approach to narrow investigations to the specific complaint, she indicates that the focus will be for "investigative staff to clear case backlogs and resolve complaints within a reasonable time-frame, thus providing effective resolution and justice to complainants and [institutions]."

Public release of the OCR internal document has resulted in significant criticism from LGBTQ advocacy groups who view the directive as confusing and failing to provide a clear position as to when complaints

centered on the use of facilities based on gender identity are subject to OCR investigation.

We will continue to monitor developments on this issue and provide additional updates as appropriate. This update is provided in follow-up to Barley Snyder alerts issued [June 2](#), [February 24](#) of this year and [August 5, 2016](#), [May 13, 2016](#), and [April 22, 2016](#).

If you have more specific questions regarding the material in this alert, or if we can provide any additional assistance as you review your existing policies and procedures, please do not hesitate to contact any of the attorneys in Barley Snyder's [Education Law group](#).