

Protecting Transgender and Nonbinary Youth in RTCs

National Center for Lesbian Rights and Youth & Education Law Project, Stanford Law School

What is the issue?

Transgender and nonbinary students face persistent harassment and mistreatment in Residential Treatment Centers (RTCs). According to research conducted by Stanford's Youth and Education Law Project, these students are targeted by transphobic staff members, denied gender affirming housing and bathroom usage, and discriminated against to the detriment of their mental and emotional wellbeing.

Many transgender and nonbinary students are placed in RTCs by their LEAs through IEPs. Under the IDEA, when an LEA places a student in a nonpublic school through the IEP process, the LEA retains responsibility for ensuring that the student receives FAPE in a non-discriminatory environment. However, many LEAs have failed to protect transgender and nonbinary students from discrimination and harassment in RTCs. OCR can help ensure that LEAs uphold their obligation to protect and appropriately educate transgender and nonbinary students in RTCs.

What did we find?

- RTCs, despite explicitly claiming otherwise, generally lacked the requisite expertise for educating, counseling, and housing trans/nonbinary students
- Trans/nonbinary students faced physical and sexual abuse by staff members, routine misgendering, feelings of isolation, and forced compliance with outdated gender-based expectations
- School days could be as short as two hours; in-person instruction was replaced with packets or electronic worksheets

Meet Rose (she/her)

Rose is a young trans woman who entered an RTC in Utah when she was 15 years old. Staff members often reacted negatively when Rose would correct them on which pronouns to use. One staff member responded by calling Rose "mentally damaged"; another said, "Don't talk back, you're the one in treatment." Some staff members at the RTC told Rose they were only respecting her name and pronouns so they would not get fired. Rose contrasted the staff's abusive behavior towards her to their calm behavior when a non-trans resident ran around the RTC naked and screaming slurs.

What are best practices for working with trans/nonbinary students?

- Respect a student's gender identity
- Inclusive language
- Trans/nonbinary positive curriculum
- Anti-discrimination policies that include gender identity
- Bathroom use and housing assignments based on gender identity
- Training for staff on trans/nonbinary student needs

What are we hoping to accomplish?

- **LEAs' accountability** for students placed in RTCs through IEPs
- **Eliminate discrimination based on gender identity** to ensure FAPE
- **Data collection and dissemination** on RTC usage and accommodations for trans, non-binary students in Section 504 plans, IEPs

What can the Department of Education do?Dear Colleague Letter

- Advise LEAs on their responsibility for providing FAPE and discrimination-free environments at RTCs
- Confirm that protection of transgender and nonbinary students falls under the Department's interpretation of Section 504, FAPE

Informal Statements

- Bring to attention of educators, policy makers, and the public that many RTCs are not following best practices for transgender and nonbinary students

Internal Memo

- Increase awareness of RTCs, their role in the education system and LEA placement, and the increased incidence of abuse/discrimination of trans/nonbinary students within them

Cross-Agency Collaboration

- Coordinate with relevant agencies on data collection and dissemination of best practices

Data Collection and Dissemination

- Increase data collection efforts to include LGBTQI+ students across educational settings
- Continue to enhance Resources for LGBTQI+ Students page
- Include information on educational settings for parents to assess policies

Section 504 Regulations

- Clarify that scope extends to RTCs used by covered entities
 - Section 104.4(b)(iv) prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services
- Clarify in Appendix A that gender identity affirming accommodations qualify as reasonable accommodations under Section 104.12(b) for a transgender student with a physical or mental impairment that substantially limits one or more major life activities