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WATCH

SHUT OUT

Restrictions on Bathroom and Locker Room Access
for Transgender Youth in US Schools



Shut Out

**Restrictions on Bathroom and Locker Room Access for
Transgender Youth in US Schools**

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Glossary

Agender: A descriptor used by people who do not identify with any gender.

Cisgender: The gender identity of people whose sex assigned at birth conforms to their identified or lived gender.

Genderfluid: A gender identity in which one's gender fluctuates and may differ over time.

Gender Identity: A person's internal, deeply felt sense of being female or male, neither, both, or something other than female and male. A person's gender identity does not necessarily correspond to their sex assigned at birth.

Gender Non-Conforming: A descriptor for people who do not conform to stereotypical appearances, behaviors, or traits associated with their sex assigned at birth.

LGBT: The umbrella term to describe those who are lesbian, gay, bisexual, or transgender.

Non-Binary: The gender identity of people who identify as neither male nor female.

Sexual Orientation: A person's sense of attraction to, or sexual desire for, individuals of the same sex, another sex, both, or neither.

Transgender: The gender identity of people whose sex assigned at birth does not conform to their identified or lived gender.

Summary

Over the past year, transgender individuals' access to bathrooms, locker rooms, and other facilities has erupted as a divisive and sensationalized issue in political debates, statehouses, courts, and communities across the United States. Efforts to limit transgender people's access to facilities that correspond with their gender identity have had a particular focus on public schools and universities, typically under the guise of protecting children.

To date in 2016, at least 18 state legislatures considered bills that would have restricted transgender students' access to bathrooms, locker rooms, and other facilities not in accordance with their gender identity. When the state of North Carolina enacted a set of sweeping restrictions, the federal Department of Justice and Department of Education issued guidance clarifying that treating transgender students differently from other students constitutes sex discrimination under Title IX of the Education Amendments of 1972. A number of states and state officials subsequently sued to challenge the Departments' interpretation of Title IX, and state officials and school administrators in many places signaled they would not require schools to allow transgender students to access facilities in accordance with their gender identity. On August 21, 2016, a federal judge in Texas issued a preliminary injunction blocking the federal guidance from taking effect nationwide while the lawsuit proceeds.

As these battles play out, transgender youth are struggling to meet basic physical needs in their school environments. For these students, being barred from facilities is not an abstract legal question, but a daily source of frustration and isolation. In an interview with Human Rights Watch in Texas, Tanya H., the mother of a nine-year-old transgender boy named Elijah, recalled: "A year ago at this time, he was having a really hard time, and he'd go into the girl's bathroom and girls would yell, 'There's a boy in here!' and he couldn't go to the boys' bathroom, and so he stopped going to the bathroom. There were a lot of meltdowns." When Elijah mentioned suicide and was briefly hospitalized, his mother spoke to administrators to ensure that he would be treated as a boy when he started at a new school in the fall. Tanya recalled: "He was kind of worried about going to a new school, and he said, 'If I can go as a boy, okay.' He's just fallen into it, and he's so much happier.... He's making friends who know him as a boy." For Elijah and other transgender

youth, access to bathrooms and locker rooms is an urgent issue that affects their safety, health, privacy, and ability to learn.

This report documents how restrictions on access to shared facilities directly affect transgender youth. From November 2015 to May 2016, researchers interviewed 74 current or former transgender students in Alabama, Pennsylvania, South Dakota, Texas, and Utah as part of a larger project on LGBT issues in US schools. The five states examined have not enacted sweeping restrictions like those of North Carolina. Yet in the absence of clear and inclusive nondiscrimination laws, policies at the school and school district level, and training for teachers and administrators, transgender students face access issues in these states as well.

The results of this research illustrate why restricting transgender students' access to shared spaces is not only unnecessary, but discriminatory and dangerous. Barring transgender students from facilities that are safe, comfortable, and gender affirming is discriminatory, and that discrimination causes real harm. It places transgender students at heightened risk of harassment, assault, and bullying, impedes their ability to secure an education and participate fully in the life of their schools, and can cause damage to their physical and emotional health. Conversely, there is no evidence that allowing transgender students to choose bathroom or locker room facilities that correspond to their gender identity puts other students at risk. As the new school year begins, it is imperative that schools and school districts implement measures that advance the rights of all their students, regardless of their gender identity or expression.

Recommendations

To the US Congress

- Enact the Equality Act or similar legislation to prohibit discrimination on the basis of sexual orientation and gender identity in education, employment, and public accommodations;
- Enact the Student Non-Discrimination Act or similar legislation to prohibit discrimination on the basis of sexual orientation and gender identity in public schools.

To State Legislatures

- Ensure that state nondiscrimination laws include explicit protections from discrimination on the basis of sexual orientation and gender identity, particularly in education, employment, and public accommodations;
- Require schools and school districts to allow transgender students to access bathrooms, locker rooms, and other gender-segregated facilities in accordance with their gender identity;
- Ease any building regulations that require particular numbers or percentages of gendered bathrooms in public or commercial buildings to permit the designation of all-gender bathrooms.

To School Administrators

- Ensure that students are able to access bathrooms, locker rooms, and other gender-segregated facilities in accordance with their gender identity;
- Train staff on accessibility issues related to transgender students, emphasizing that staff should not question or discipline students who choose to use all-gender bathrooms or other facilities made available to them—for example, nurse or faculty bathrooms—and should recognize that such facilities may be distant from classrooms and require extra time;
- Consider erecting stalls, barriers, and privacy curtains to maximize student privacy in bathrooms, locker rooms, and shared facilities;

- Designate all-gender bathrooms in easily accessible locations throughout the school wherever feasible, particularly in instances where single-user bathrooms are currently gendered;
- Incorporate all-gender bathrooms and private changing and shower areas into planned renovations or any construction of new facilities.

Methodology

Human Rights Watch conducted the research for this report between November 2015 and May 2016 in five US states: Alabama, Pennsylvania, South Dakota, Texas, and Utah. Human Rights Watch contacted potential interviewees through nongovernmental organizations, LGBT organizations in high schools and middle schools, and LGBT organizations in postsecondary institutions where recent graduates reflected on their high school experiences. Researchers spoke about accessibility issues in schools with 74 transgender students or recent graduates, as well as with more than 50 teachers, administrators, parents, service providers, and advocates for transgender youth.¹

All interviews were conducted in English. No compensation was paid to interviewees. Whenever possible, interviews were conducted one-on-one in a private setting. Researchers also spoke with interviewees in pairs, trios, or small groups when students asked to meet together or when time and space constraints required meeting with members of student organizations simultaneously. Researchers obtained oral informed consent from interviewees, and notified interviewees why Human Rights Watch was conducting the research and how it would use their accounts, that they did not need to answer any questions they preferred not to answer, and that they could stop the interview at any time. When students were interviewed in groups, those who were present but did not actively participate and volunteer information were not recorded or counted in our final pool of interviewees.

In this report, pseudonyms are used for interviewees who are students, teachers, or administrators in schools. Pseudonyms are not used for individuals and organizations who work in a public capacity on the issues discussed in this report.

¹ Here, the umbrella term “transgender” is used to broadly encompass students who identify as transgender boys or transgender girls as well as those who identified as agender, genderfluid, non-binary, or other gender identities that differ from their sex assigned at birth.

Background

In 2016, legislatures in at least 18 states considered bills that would have prohibited transgender students from accessing bathrooms and locker rooms consistent with their gender identity.² The majority of these bills were withdrawn, were defeated or stalled in committee, or otherwise failed to garner legislative approval, with the exceptions of bills in South Dakota and North Carolina. In South Dakota, legislators approved a bill restricting access for transgender youth in schools, but it was vetoed by Governor Dennis Daugaard and did not become law.³ In North Carolina, legislators convened for a special, daylong session on March 23, 2016, where they introduced, debated, and passed a sweeping law restricting access to facilities and repealing local ordinances that prohibited discrimination on the basis of sexual orientation and gender identity. The same evening, Governor Pat McCrory signed the law, which took immediate effect.⁴

The passage of North Carolina's law put the state's regulation of shared facilities in conflict with the positions of the federal Department of Justice and Department of Education. In enforcement actions, both agencies had taken the position that Title IX of the Education Amendments of 1972, which prohibits sex discrimination in educational programs or activities that receive federal funding, encompasses discrimination on the basis of gender identity. On May 9, 2016, the Department of Justice sued North Carolina, arguing the state's law constituted discrimination on the basis of sex under Title IX, Title VII of the Civil Rights Act of 1964, and provisions of the Violence Against Women Reauthorization Act of 2013.⁵ The same day, officials in North Carolina sued the Department of Justice in a federal

² Bills restricting access to shared facilities were introduced in Illinois, Indiana, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, Washington, and Wisconsin. See National Center for Transgender Equality, "Action Center," <http://www.transequality.org/action-center> (accessed August 22, 2016).

³ Office of Gov. David Daugaard, "Gov. Daugaard Vetoes HB 1008," March 1, 2016, <http://news.sd.gov/newsitem.aspx?id=19926> (accessed August 15, 2016).

⁴ Michael Gordon, Mark S. Price, and Katie Peralta, "Understanding HB2: North Carolina's Law Solidifies State's Role in Defining Discrimination," *Charlotte Observer*, March 26, 2016, <http://www.charlotteobserver.com/news/politics-government/article68401147.html> (accessed August 27, 2016); General Assembly of North Carolina, "House Bill 2," <http://ncleg.net/Sessions/2015E2/Bills/House/PDF/H2v4.pdf> (accessed August 27, 2016).

⁵ Complaint in *United States v. North Carolina*, <https://www.justice.gov/opa/file/849946/download> (accessed August 27, 2016).

court in North Carolina, challenging its interpretation of sex discrimination under the federal statutes.⁶

On May 13, 2016, the Department of Justice and Department of Education jointly issued guidance for all schools that receive federal assistance, affirming that:

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity.⁷

The guidance addressed bathrooms and locker rooms, and specified that, “[w]hen a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.”⁸

In the days that followed, officials in at least six states instructed schools and school officials to disregard the federal guidance.⁹ On May 25, 2016, a group composed of nine state governments and several other state and local authorities sued the US Department of Justice, Department of Education, Department of Labor, and Equal Employment Opportunity Commission in a federal court in Texas, challenging the agencies' interpretation of Title IX to

⁶ Complaint in *McCrary v. United States*, <http://www.newsobserver.com/news/politics-government/state-politics/article76561707.ece/BINARY/Complaint%20McCrary%20v%20USA> (accessed August 27, 2016); Complaint in *Berger v. United States*, <http://media2.newsobserver.com/content/media/2016/5/9/1=Complaint.pdf> (accessed August 27, 2016).

⁷ US Department of Justice & US Department of Education, “Dear Colleague Letter on Transgender Students,” May 13, 2016, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf> (accessed September 1, 2016).

⁸ *Ibid.*

⁹ Officials in North Carolina, Texas, Mississippi, Kentucky, Utah, and Arkansas all indicated that schools were not bound by or should reject the guidance shortly after it was issued. “States Push Back on Transgender Bathroom Use,” CBS News, May 13, 2016, <http://www.cbsnews.com/news/states-push-back-on-transgender-bathroom-use> (accessed August 27, 2016); Daphne Chen, “Herbert Slams Obama ‘Bathroom’ Directive as Federal Overreach,” *Deseret News*, May 13, 2016, <http://www.deseretnews.com/article/865654260/Herbert-slams-Obama-bathroom-directive-as-federal-overreach.html?pg=all> (accessed August 27, 2016); Emanuella Grinberg, “Feds Issue Guidance on Transgender Access to School Bathrooms,” CNN, May 14, 2016, <http://www.cnn.com/2016/05/12/politics/transgender-bathrooms-obama-administration> (accessed August 27, 2016); “Bevin: Schools Should Disregard ‘Unlawful’ Transgender Bathroom Guidance from White House,” *WDRB News*, May 31, 2016, <http://www.wdrb.com/story/32105292/bevin-schools-should-disregard-unlawful-transgender-bathroom-guidance-from-white-house> (accessed August 27, 2016); Greg Gordon and Colin Campbell, “McCrary Says Obama Policy Upends Bathroom Etiquette,” McClatchy, May 13, 2016, <http://www.mcclatchydc.com/news/politics-government/article77539102.html> (accessed August 27, 2016).

prohibit discrimination on the basis of gender identity.¹⁰ Days later, Kentucky and Mississippi joined the suit. On July 8, 2016, 10 additional states brought a similar suit regarding Title IX in a federal court in Nebraska.¹¹ On August 21, 2016, a federal judge issued a preliminary injunction blocking federal agencies from enforcing their interpretation of Title IX nationwide while the case is under consideration.¹² On August 26, 2016, another federal judge gave credence to the federal guidance, and issued a preliminary injunction blocking North Carolina's law from being applied to three transgender plaintiffs at the University of North Carolina.¹³ As these cases about the scope of Title IX proceed through the judicial system, transgender students who need access to bathrooms, locker rooms, and other shared facilities are returning to school across the United States.

¹⁰ The states are Alabama, Georgia, Louisiana, Oklahoma, Tennessee, Texas, Utah, West Virginia, and Wisconsin. Arizona's Department of Education, Governor Paul LePage of Maine, and school districts in Arizona and Texas were also plaintiffs in the suit.

¹¹ The states are Arkansas, Kansas, Michigan, Montana, Nebraska, North Dakota, Ohio, South Carolina, South Dakota, and Wyoming.

¹² *Texas v. United States*, No. 7:16-cv-00054-O (N.D.Tex. Aug. 21, 2016).

¹³ Mark Berman, "Federal Judge Says UNC Can't Enforce North Carolina's Transgender Bathroom Restrictions," *Washington Post*, August 26, 2016, https://www.washingtonpost.com/news/post-nation/wp/2016/08/26/federal-judge-says-unc-cant-enforce-restroom-restrictions-in-north-carolinas-bathroom-bill/?utm_term=.bb3b9cecbco3 (accessed September 1, 2016).

I. Students at Risk

Safety

One of the most pressing concerns for transgender students is safety in bathrooms and locker rooms. Although proponents of bathroom and locker room restrictions cite student safety as a reason to require students to use facilities according to their sex assigned at birth, the reality is that transgender individuals face high rates of verbal harassment and even physical assault in bathrooms.¹⁴ Because bathrooms and locker rooms are not monitored by teachers, students are often at heightened risk for bullying and harassment in these spaces. When schools require transgender girls to use the men's room or force transgender boys to use the women's room, they put them at risk of physical, verbal, or sexual assault from other students or adults.

Transgender students interviewed by Human Rights Watch said that being made to use facilities that did not correspond to their gender identity made them feel unsafe at school or exposed them to verbal and physical assault. Willow K., a 14-year-old transgender girl in Texas, recalled of her required eighth grade gym class: "I had to strip down into my girly underwear in front of a bunch of guys who would call me these rude names, and I couldn't go to the bathroom [or girls' locker room] to change ... and it made me so uncomfortable."¹⁵ The previous year, Willow had been assaulted by a group of football players in the locker room, making the requirement that she use the male locker room particularly difficult. Alexis J., a self-described genderfluid 19-year-old in Texas, recalled a gym class where "I had to strip down to girly underwear in front of a bunch of dudes. And they're like, 'faggot.' And this was freshman year, so they're just vicious."¹⁶

Transgender students expressed particular concern about physical assault and harassment in boys' bathrooms and locker rooms, but described harassment in girls' bathrooms and locker rooms as well. Kevin I., a 17-year-old transgender boy in Utah, noted

¹⁴ Jeff Brady, "When a Transgender Person Uses a Public Bathroom, Who is at Risk?" NPR Weekend Edition, May 15, 2016, <http://www.npr.org/2016/05/15/477954537/when-a-transgender-person-uses-a-public-bathroom-who-is-at-risk> (accessed August 27, 2016).

¹⁵ Human Rights Watch interview with Willow K. (pseudonym), Texas, November 10, 2015.

¹⁶ Human Rights Watch interview with Alexis J. (pseudonym), Texas, November 10, 2015.

“It was hard for me to be in a female locker room. People would ask if I was a lesbian, or was going to have sex with anyone in the locker room, and it was just very uncomfortable.”¹⁷ And while many of the transgender students we interviewed identified strongly as boys or girls and wanted to use the corresponding facilities, many others said they did not feel safe in either space and felt their only option was to forego bathrooms, gym classes, and gendered extracurricular activities with their peers altogether.

Health

Bathrooms, locker rooms, and other shared facilities are necessary to perform bodily functions or maintain physical hygiene when students are confined to the school environment for significant portions of the day. Restricting access to these facilities negatively affects the physical and mental health of transgender youth.

As noted above, many transgender students told us that when they lacked a safe or accessible bathroom or locker room in school, their standard strategy was to avoid all school bathrooms and locker rooms. Sans N., a 15-year-old transgender boy in Utah, explained: “I just don’t go to the bathroom at school. It’s just so awkward. I just look at the signs and I’m like, I can’t go in the ladies’ because it makes it me uncomfortable, and I can’t go in the boys’ because I’m going to get yelled at.”¹⁸ Paisley E., a 15-year-old transgender boy in Texas, found that his school’s limited all-gender options were often inaccessible or unavailable: “There’s one gender neutral bathroom in the janitor’s closet, and they finally put one in the nurse’s office. And then there’s one in the special needs classroom, and I didn’t always feel comfortable walking in when they were doing the lessons. So for about one-and-a-half months I did not go to the bathroom at school.”¹⁹

Avoiding the bathroom for the duration of the school day can have negative repercussions for students’ physical and mental health. Research indicates that avoiding bathroom use for extended periods of time is linked to dehydration, urinary tract infections, and kidney problems.²⁰ Cassidy R., a self-described agender 18-year-old in Utah, recalled: “I know a

¹⁷ Human Rights Watch telephone interview with Kevin I. (pseudonym), Utah, January 9, 2016.

¹⁸ Human Rights Watch interview with Sans N. (pseudonym), Utah, December 7, 2015.

¹⁹ Human Rights Watch interview with Paisley E. (pseudonym), Texas, November 15, 2015.

²⁰ Jody L. Herman, “Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender Peoples’ Lives,” *Journal of Public Management and Social Policy*, Vol. 19 (2013), p. 75-76.

lot of my friends just didn't go to the bathroom and suffered a lot of infections and health problems because of that.”²¹ Daniel N., a 17-year-old transgender boy in Texas, described the planning it required to take advantage of the sole all-gender bathroom in his school in the face of administrative indifference: “I talked to people at the school and they said I had to use the bathroom in the clinic. It's three minutes to walk to the bathroom, and then I have to pee, and then I have to go back. The teacher is like, where were you, and why were you in the clinic bathroom, and it's awkward. I don't pee during school, which is a very bad habit. Because I don't drink [water] at school, and I'm dehydrated.”²²

In addition to physical health issues, students underscored the mental health repercussions of being denied access to the spaces their peers used because they were transgender, including anxiety and feelings of gender dysphoria.²³ Acanthus R., a 17-year-old transgender student in Utah, pointed out: “If you're assigned female at birth now, you go to the women's room, and it's just a reminder about what you hate most about yourself. And if you go the men's bathroom, it's, ‘Am I going to get jumped,’ ‘Am I going to get suspended,’ ‘Is someone going to call me a tranny?’”²⁴

Parents of transgender youth observed the repercussions of that dilemma, particularly in elementary schoolers and middle schoolers. Tanya H. noted that Elijah, the transgender boy whose case is described in the summary of this report, vocalized thoughts of suicide when he was treated as a girl at his former school but was happier and healthier when recognized as a boy by teachers and peers at his new school. Ingrid A., the parent of a transgender girl in Pennsylvania, recalled a similar shift when her daughter transitioned at school: “She was a darker child, prior. When she would be angry, her tantrums would go to a dark place: ‘I want to die,’ ‘God made a mistake,’ ‘I'm not supposed to be a boy.’... But that year of transition, she just became comfortable with herself and you just saw this kid blossom.”²⁵

²¹ Human Rights Watch interview with Cassidy R. (pseudonym), Utah, December 2, 2015.

²² Human Rights Watch interview with Daniel N. (pseudonym), Texas, November 10, 2015.

²³ The American Psychiatric Association has explained that gender dysphoria occurs when there is “a marked difference between the individual's expressed/experienced gender and the gender others would assign him or her,” which “causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.” American Psychiatric Association, “Gender Dysphoria,” 2013, <http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf>.

²⁴ Human Rights Watch interview with Acanthus R. (pseudonym), Utah, December 7, 2015.

²⁵ Human Rights Watch interview with Ingrid A. (pseudonym), Pennsylvania, May 5, 2016.

The health problems associated with restricting transgender students' bathroom use are not limited to high schoolers, and may occur before parents and teachers are aware that the student is questioning their gender or identifying as transgender and struggling to find safe and accessible options. Jillian Hill, the Director of Operations at the Inclusion Center for Community and Justice in Utah, recounted meeting an elementary school student who avoided the bathroom for the duration of the school day.²⁶ Susanna K., the mother of a transgender boy in Utah, recalled that when her son came out as transgender: "[H]e told us about junior high and not going to the bathroom all day. He was getting bladder infections and we didn't know why. [He] said if he went into the boys' bathroom, he would have gotten beaten up, and if he went into the girls' bathroom, he would have been teased, and maybe been beaten up."²⁷ Susanna's son eventually switched to a local charter school, where he was able to use bathrooms consistent with his gender identity. As she recalled, that decision "ended up being the best thing for him. He made a lot of friends and was able to be authentic there."²⁸

Privacy

Proponents of restrictions on bathroom and locker room access often cite privacy as a justification for excluding transgender youth. In this telling, the presence of transgender students in bathrooms that correspond to their gender identity compromises the privacy of cisgender students using the same facilities, and exposes them to feelings of discomfort or insecurity. However, as described above, these concerns are far outweighed by the harmful and potentially dangerous impact on transgender students of policies that deny them the use of facilities that correspond to their gender identity. Such discrimination can also undermine transgender students' right to privacy, by effectively outing them as transgender to peers and school staff.

Some schools have allowed transgender students to use alternative facilities, including faculty bathrooms normally off-limits to students, as an alternative to giving them free access to facilities that correspond with their gender identity. This is not an adequate compromise. Several transgender students told us that requesting or using gender neutral

²⁶ Human Rights Watch interview with Jillian Hill, Director of Operations at the Inclusion Center for Community and Justice, Salt Lake City, Utah, November 25, 2015.

²⁷ Human Rights Watch interview with Susanna K. (pseudonym), Utah, December 8, 2015.

²⁸ Human Rights Watch interview with Susanna K. (pseudonym), Utah, December 8, 2015.

options served to convey their transgender status to faculty, staff, and peers as well. Julian L., a 15-year-old transgender boy in South Dakota, noted: “I talked to my counselors and they told me to use the staff bathroom. I once saw three students there and they were like, ‘Why are you here? You’re a student,’ and I told them and they understood. And it would be nice to not have to explain it to them.”²⁹ Silas G., a 15-year-old transgender boy in South Dakota, had a similar experience: “My teacher would grill me, ‘Why are you going to the nurse?’ ‘Why are you going to the nurse?’ ‘Why are you going to the nurse?’ And I got yelled at for using the faculty bathroom.”³⁰ Teagan W., a 16-year-old transgender boy in Texas, noted that, when using the faculty bathroom, “I get a lot of weird looks from teachers. I’ll wait until teachers go in so they’re not like, ‘What are you doing?’”³¹

On the other hand, some transgender students prefer the use of all-gender facilities because they do not feel comfortable in bathrooms that correspond to either gender. In these situations, schools should take steps to minimize the degree of unwanted scrutiny this generates, including by instructing teachers to refrain from interrogating students’ use of alternative facilities.

Many transgender students’ fear of being “outed” extends beyond the school environment to their own families. Many students who are transgender or are exploring their gender identity are not out to their families, fearing hostility or negative repercussions at home. In some instances, students who have sought accommodations from their schools have been outed to family, classmates, and others without their consent. Henry C., a 16-year-old transgender boy in Pennsylvania, warned: “You can get a staff key for the faculty bathroom, but the last kid I know who asked to do that was outed to their parents by the office staff.”³² For students who feared strong disapprobation, violence, or being kicked out of their house if their transgender status was disclosed to their parents, the threat of disclosure can discourage them from talking with school officials about bathroom access, including discussions of all-gender alternatives.

Privacy is indeed lacking in many school bathroom and locker room facilities. Some schools have removed stall doors from bathrooms in an effort to deter drug use and other

²⁹ Human Rights Watch interview with Julian L. (pseudonym), South Dakota, February 14, 2016.

³⁰ Human Rights Watch interview with Silas G. (pseudonym), South Dakota, February 12, 2016.

³¹ Human Rights Watch interview with Teagan W. (pseudonym), Texas, November 13, 2015.

³² Human Rights Watch interview with Henry C. (pseudonym), Pennsylvania, April 15, 2016.

prohibited behavior. And many if not most school locker rooms require students to change clothes and/or shower in a shared, communal space without curtains or other barriers. Rather than bar transgender students from accessing bathrooms and locker rooms that correspond to their gender identities out of concern for student privacy, school administrators should consider steps to increase the level of privacy enjoyed by all students when using these facilities. Many transgender students told Human Rights Watch that they wished their schools would adopt such measures.

Some schools have successfully taken these steps. As Harley A., an administrator who has overseen the implementation of such a policy in Pennsylvania, noted: “One of the first things I did when I started this was to go to facilities and say, go around to every bathroom and locker room and make sure there are doors on the stalls.”³³ With the inclusive policy in place, they added, “there’s a couple kids changing for gym in the locker room of their gender identity, and that’s worked fine.”³⁴

Education

Restrictions on bathroom usage compromise transgender students’ education and their ability to participate fully in the school community on an equal footing with others. Like all students, transgender and gender non-conforming students are in school to learn. When students are preoccupied with the unavailability of safe places to relieve themselves, forego participation in gym classes, or suffer other negative impacts resulting from discriminatory restrictions, they are less able to learn and participate fully in the school community.

Some students noted they had compromised their participation in gym to avoid having to change with their peers. Ursula P., a 16-year-old transgender girl in Alabama, recalled:

They refused to put me in girls’ PE last year, and I was scared to go in the locker room and [change clothes] and wouldn’t participate, and so I failed. I requested to do girls’ PE and it’s been over a month; I don’t think they’re making the decision. And I need a whole year of PE to graduate. I’m worried about physical bullying and verbal bullying in the locker room, and

³³ Human Rights Watch interview with Harley A. (pseudonym), Pennsylvania, April 13, 2016.

³⁴ Ibid.

harassment; I've experienced harassment every time I went in there, and finally I just couldn't do it anymore.³⁵

Silas G., a 15-year-old transgender boy in South Dakota, described a similar problem:

I have to use the female locker room or go in the health teacher's room, which is in the female locker room. When I had health, I was able to change in [the health teacher's] office, but it had a huge window so I'd have to change in the tiny bathroom or in an actual closet. I just stopped changing and I'd get points marked off.³⁶

In some instances, students who had been offered the use of all-gender bathrooms noted that these were inconveniently located. Because of the way that schools are designed, all-gender options near the office, nurse, auditorium, or theater were often distant from the classroom wing of the building, and far less prevalent than gendered options. Zack T., a 16-year-old transgender boy in Texas, noted: "I've been trying to get gender-neutral bathrooms this year. I have a problem holding it or having to go to the counselor's restroom or the office's bathroom. It takes probably three minutes to get there, three minutes to use the restroom, three minutes to get back, like ten minutes. And that's out of an hour of classroom time, and is cutting into my learning time. But the nearest guy's room is just down the hallway."³⁷ Brook E., an 18-year-old agender student in Utah, recalled: "[T]here are technically teacher bathrooms that are single stall and gender neutral, but they're all locked. And I was like, can I just have a key for those bathrooms? And that didn't work, they said no, just walk down to the nurse's office.... I just want to go to the bathroom, not hike across the school."³⁸

The unavailability of safe and accessible bathrooms and locker rooms also compromises participation in the school community more generally. Lucas K., an 18-year-old transgender boy in South Dakota, requested access to the single-stall staff bathroom as an all-gender option at the school. When the principal refused the request, he devised an alternative to

³⁵ Human Rights Watch interview with Ursula P. (pseudonym), Alabama, January 28, 2016.

³⁶ Human Rights Watch interview with Silas G. (pseudonym), South Dakota, February 12, 2016.

³⁷ Human Rights Watch interview with Zack T. (pseudonym), Texas, November 8, 2015.

³⁸ Human Rights Watch interview with Brook E. (pseudonym), Utah, November 27, 2015.

avoid having to use the women's bathroom: "I go home for lunch and use the bathroom there. And I don't go for the rest of the day."³⁹ Other students described similar strategies of leaving the campus entirely to find a bathroom at a gas station, fast food restaurant, or other establishment that they could use safely and comfortably, and, as a result, missing out on opportunities to eat lunch or socialize with peers. Students also explained that they did not participate in extracurricular activities—primarily sports, but also activities like choir—because they expected they would have to participate as their sex assigned at birth in the activity and any associated use of locker rooms or bathrooms for out of town trips.

³⁹ Human Rights Watch interview with Lucas K. (pseudonym), South Dakota, February 13, 2016.

II. Discipline

Strictly regulating transgender students' access to shared facilities also puts those students at risk of disciplinary action. When students feel there was no bathroom they could safely, privately, and conveniently use, they often break the rules. Willow K., a 14-year-old transgender girl in Texas, recalled: "I've tried going to the girl's bathroom; there's a girl who doesn't like me and she told one of the teachers and I got in trouble and got written up. I talked to the principal and said, 'Hey, I'm this way, and it makes me really uncomfortable,' and he said, 'No, you're a boy.'"⁴⁰

A number of students shared stories of being reprimanded by teachers or administrators, despite the fact that no incidents occurred as a result of their use of the bathroom that matched their gender identity. In one incident, a student in Alabama was dragged from the bathroom by the school principal, and, in many others, students were told they had to stop using the bathroom immediately.⁴¹

⁴⁰ Human Rights Watch interview with Willow K. (pseudonym), Texas, November 10, 2015.

⁴¹ Human Rights Watch interview with Lucia Hermo, Outreach Paralegal, ACLU of Alabama, Montgomery, Alabama, January 26, 2016; Human Rights Watch interview with Lacey Kennedy, Youth Advocacy Organizer at AIDS Alabama, Birmingham, Alabama, January 29, 2016.

III. All-Gender Options

Some students told Human Rights Watch that all-gender facilities, introduced as an option available to all students, would be their preferred solution, and lessen the stress of gender policing by peers and teachers. Schools should consider doing so where possible.

Cassidy R., an 18-year-old agender student in Utah, recalled:

I would just not go to the bathroom at school. It was just an overall sense of discomfort, and I personally just don't feel that using the women's or the men's bathroom is accurate for who I am, and don't feel comfortable using either. If you go to the men's bathroom, you risk being assaulted, and if you go to the women's bathroom, you get, 'Why are you here?'⁴²

Logan J., an 18-year-old student in Utah, similarly noted: "I identify as non-binary and it's difficult to even use a restroom in public. I'm stuck here for eight hours and I don't feel comfortable going to the bathroom because I have to make a choice there, and I'm not comfortable in either and there's no gender neutral option."⁴³

Cassidy's and Logan's dilemmas were not uncommon for students who were agender, genderfluid, or non-binary, and even some transgender boys and girls found gendered bathrooms intimidating. As Dominic J., a 13-year-old transgender boy in Pennsylvania, noted: "I've been yelled at in both the men's bathrooms and the women's bathrooms in my school."⁴⁴

In interviews, students lauded a range of approaches that some schools have adopted to expand all-gender options. Some schools simply redesignated gendered, single-stall bathrooms as all-gender bathrooms, and opened them for use by anyone who needs them. As other schools were built or remodeled, they added more single-stall bathrooms, often in the form of family bathrooms or accessible bathrooms that serve the needs of families and

⁴² Human Rights Watch interview with Cassidy R. (pseudonym), Utah, December 2, 2015.

⁴³ Human Rights Watch telephone interview with Logan J. (pseudonym), Utah, January 9, 2016.

⁴⁴ Human Rights Watch interview with Dominic J. (pseudonym), Pennsylvania, April 15, 2016.

people with disabilities as well as transgender individuals. A third option—increasingly common in colleges and in LGBT spaces—is to designate certain multi-stall bathrooms as all-gender, often by outfitting them to maximize privacy for all patrons with dividers or stalls. Although students should not be forced to use all-gender options and should be able to access facilities according to their gender identity, the provision of additional options provides an alternative to anyone who is uncomfortable in gendered facilities.

IV. Human Rights Analysis

As the 2016/2017 school year begins, legal challenges to the federal guidance interpreting Title IX are still working their way through the courts, leaving the obligations of state governments and school districts under US federal law unsettled. However, the steps needed to protect and uphold the human rights obligations of transgender students are clear, regardless of the precise scope of federal regulatory power in this space.

State governments are obliged under international human rights law to refrain from discriminating against transgender students. North Carolina's law is an act of affirmative and deliberate discrimination that is in violation of international human rights law; other states should not emulate it. They should instead take steps to encourage school administrations to facilitate transgender students' access to facilities that correspond with their gender identities and, where appropriate, to all-gender facilities they can use safely and comfortably. Such steps are necessary to ensure transgender students' ability to access education on an equal footing with others in an environment that is safe and free of discrimination and fear, and also to protect their health. For its part, the US federal government should continue to take steps to both mandate and encourage state governments to undertake these actions, to the extent possible given the limits of federal legislative and regulatory authority.

The International Covenant on Civil and Political Rights (ICCPR), which the United States has ratified, obliges all levels of the US government⁴⁵ to respect and uphold the rights of transgender people to be free from discrimination, to recognition as a person before the law, and to privacy, as well as the right of children to special measures of protection.⁴⁶ The Human Rights Committee, the treaty body that monitors and provides guidance to

⁴⁵ The provisions of the ICCPR "extend to all parts of federal States without any limitations or exceptions." ICCPR, art. 50.

⁴⁶ ICCPR arts. 16, 17, 24, 26. The Human Rights Committee, the expert body that guides states in their implementation of the ICCPR, has affirmed that article 24 requires states to adopt "special measures to protect children." Human Rights Committee, "General Comment No. 17: Rights of the Child," April 7, 1989, <http://www.refworld.org/docid/45139b464.html>, para 1-2. The United States has also signed the Convention on the Rights of the Child (CRC). Although it has not ratified the treaty, as a signatory it is bound to avoid actions that contravene the purpose of the treaty. The Committee on the Rights of the Child, the UN treaty body that interprets and applies the Convention on the Rights of the Child, has concluded that the treaty's prohibited grounds for discrimination "also include sexual orientation, gender identity, and health status." Committee on the Rights of the Child, "General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24)," U.N. Doc. CRC/C/GC/15, April 17, 2013, para. 8.

governments on implementation of the ICCPR, has expressed concern about discrimination on the basis of gender identity and lauded states that have taken steps to recognize the gender identity of transgender people.⁴⁷

The right to education under international law is elaborated by the Universal Declaration on Human Rights, the Convention on the Rights of the Child (CRC), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The United States has signed, but not ratified, both the CRC and the ICESCR, meaning that it is not bound by either treaty but is obliged to act consistently with their object and purpose. The Committee on the Rights of the Child, which guides states in their implementation of the CRC and is an authoritative voice on the rights of children, has rightly explained that the process of fulfilling the right to education must take account of “the environment within which education takes place,” and that governments should ensure schools are safe for all students.⁴⁸ As this report has explained, the failure of authorities at all levels to enact reasonable accommodations for transgender students creates an environment that negatively impacts their ability to participate fully in the experience of schooling and education, places their health at risk, and places them at heightened risk of violence, harassment, and bullying.

In districts across the US, many schools have recognized that they have or will have transgender students in their care, and have taken proactive steps to ensure their rights are respected.⁴⁹ At least eight of the schools or school districts visited by Human Rights Watch have developed policies and proposals to ensure that transgender students are able to access facilities according to their gender identity, and officials or parents of transgender youth told us that those policies have been implemented without incident.⁵⁰

⁴⁷ See Concluding Observations of the Human Rights Committee on Ireland, U.N. Doc. CCPR/C/IRL/CO/3, July 30, 2008, para. 8; Concluding Observations of the Human Rights Committee on the United Kingdom of Great Britain and Northern Ireland, U.N. Doc. CCPR/C/GBR/CO/6, July 30, 2008, para. 5. The Committee has also indicated that transgender individuals who have undergone gender reassignment procedures have a right under the ICCPR to be issued identity documents that correspond with their gender identity. Concluding Observations on Ireland, para. 8.

⁴⁸ UN Committee on the Rights of the Child, “General Comment No. 1, The Aims of Education (Article 29),” U.N. Doc. CRC/GC/2001/1, April 17, 2001, para. 8. The United States has signed, but not ratified, the CRC.

⁴⁹ Nearly every school visited by Human Rights Watch had at least one student who identified as transgender, agender, genderfluid, or non-binary. Data on the number of transgender youth are scarce, but a number of teachers and administrators interviewed by Human Rights Watch suggested that policy concerns related to gender identity in schools are arising with greater frequency as awareness increases and merit proactive attention.

⁵⁰ Human Rights Watch interview with Tanya H. (pseudonym), Texas, November 14, 2015; Human Rights Watch interview with Susanna K. (pseudonym), Utah, December 8, 2015; Human Rights Watch interview with Pam A. and Chuck A. (pseudonyms), Alabama, January 21, 2016; Human Rights Watch interview with Kent D. (pseudonym), Alabama, January 22, 2016; Human

Schools around the United States should take similar steps to ensure that all students are able to use facilities without discrimination and are equally able to participate and learn.

Rights Watch interview with Harley A. (pseudonym), Pennsylvania, April 13, 2016; Human Rights Watch interview with Vanessa M. (pseudonym), Pennsylvania, May 3, 2016; Human Rights Watch interview with Ingrid A. (pseudonym), Pennsylvania, May 5, 2016; Human Rights Watch interview with Lillian D. (pseudonym), Pennsylvania, May 6, 2016.

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SHUT OUT

Restrictions on Bathroom and Locker Room Access for Transgender Youth in US Schools

In 2016, lawmakers across the United States proposed bills to restrict transgender individuals' access to bathrooms and locker rooms consistent with their gender identity. Although only one of these bills became law—in North Carolina—transgender youth face analogous restrictions in schools and school districts across the country. This report, based on interviews with 74 transgender students and over 50 parents, educators, and administrators in Alabama, Pennsylvania, South Dakota, Texas, and Utah, documents how these restrictions expose transgender youth to bullying and harassment, mental and physical health problems, unwanted disclosure of their transgender status, and barriers to participation in the educational environment. It urges federal, state, and local officials to ensure that all students are able to access bathrooms and locker rooms consistent with their gender identity in the school environment.

(above) Demonstrators protesting passage of legislation limiting bathroom access for transgender people stand in front of the Charlotte-Mecklenburg Government Center in Charlotte, NC on March 31, 2016.

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(front cover) Students hold stickers about to be placed on a new all-gender bathroom as members of the cheer squad applaud at Nathan Hale High School in Seattle, WA on May 17, 2016.

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