

Third-Circuit Upholds Pennsylvania School District Transgender Bathroom Policy

The U.S. Court of Appeals for the Third Circuit recently issued a precedential opinion allowing transgender students at a southeastern Pennsylvania school district to continue using the bathrooms and locker rooms that correlate with the genders that they identify with.

Joel Doe, et al. v. Boyertown Area School District, et al.

The lawsuit was initiated by a group of students of Boyertown Area high school who believe the policy violated their constitutional rights of bodily privacy, Title XI, and tort law. The plaintiffs sought a preliminary injunction to enjoin the school's policy of permitting transgender students to use the locker rooms and restrooms that aligned with their gender identities.

The Court started its opinion by breaking down the relevant terms needed to understand the issues involved in the case. "Sex" is defined as the "anatomical and physiological processes that lead to or denote male or female" and "gender" is a "broader societal construct" that encompasses how a "society defines what male or female is within a certain cultural context." The Court then explained that the term "transgender" refers to an individual whose gender identity does not align with the sex that person was determined to have at birth. It subsequently defined the numerous harmful effects that transgender individuals face from policies that prohibit them from facilities that they identify with. The Court explained that these policies worsen issues already facing transgender students, such as suicide, depression, low self-esteem, self-injurious behaviors, substance abuse, eating disorders, and homelessness, among other conditions. Specifically applicable to this case, the Court noted that forcing transgender students to use locker and bathrooms that do not match their gender identity causes severe psychological distress that often leads to attempted suicide.

The Third Circuit then agreed with the District Court that the plaintiffs' constitutional right to privacy claim was unlikely to succeed. The Court explained that although individuals have a constitutionally protected privacy interest in his or her partially clothed body, the school's policy did not rise to the level of a constitutional violation, as the policy served a compelling interest; preventing discrimination against transgender students. The Court further explained that the policy was narrowly tailored to that interest. Moreover, the Third Circuit noted the promotion of diversity, inclusion, and acceptance by the school's policy, which benefits not only the transgender students but *all* students. In explaining its decision, the Court stated that the "presence of transgender students in the locker and restrooms is no more offensive to constitutional or Pennsylvania-law privacy interests than the presence of other students who are not transgender."

The Court then explained that while it was not attempting to minimize the plaintiff's needs or concerns, the consequences facing transgender students were much greater than those facing the plaintiffs.

Moreover, the Third Circuit found that the school's policy did not violate Title IX, as it treated all students similarly and did not discriminate based on sex. The Court specifically explained that, although Title IX and the Constitution allow institutions to provide same-sex accommodations, neither actually require "separate privacy facilities for the sexes."

The Court also held that the plaintiff's failed to provide support for a "hostile environment harassment" cause of action under Title IX. The Third Circuit concluded that the presence of transgender students in locker rooms and bathrooms is not objectively offensive, nor does not rise to the level sexual harassment.

The Court then rejected plaintiff's state law tort claim, again explaining that the "mere presence" of transgender students in locker rooms is not conduct that would be "highly offensive to a reasonable person."

The Court finally upheld the District Court's finding that plaintiff's did not demonstrate any irreparable harm would result from a denial of the injunction as they had the option to use single-user bathrooms made available by the school and equal access to all facilities.

What Does This Ruling Mean Moving Forward?

IX protects people from discrimination based on sex in education programs or activities that receive federal financial assistance. Title IX states that: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. 20 U.S.C. A. §1681 et seq.

Under President Obama, the U.S. Department of Education issued guidance directing schools to allow students to use the restrooms and locker rooms that match their gender identities, citing Title IX. At the time, the Obama administration warned that schools that defied the recommendation could be at risk of losing federal funds.

The U.S. Department of Education issued new Title IX Guidance on February 22, 2017, rescinding the Obama rule on transgender student bathroom use. Furthermore, it advised that it will no longer be investigating civil rights complaints from transgender students barred from school bathrooms that match their gender identity. It explained that the Obama guidance did not “contain extensive legal analysis or explain how the position is consistent with the express language of Title IX, nor did they undergo any formal public process. This interpretation gives rise to significant litigation regarding school restrooms and locker rooms.” However, it is necessary to note that the guidance above holds no precedential value.

The ruling of the Third Circuit is important as few courts have actually discussed the issue of transgender students’ use of bathrooms and locker rooms. The case of Gavin Grimm has garnered the most attention around the country. The American Civil Liberties Union (ACLU) filed a lawsuit on behalf of Gavin Grimm in 2015, alleging Fourteenth Amendment Equal Protection violations and Title IX violations. The case involved a transgender male student, Gavin Grimm, who argued that the bathroom policy of a Virginia high school requiring students to use the bathroom that corresponds with their biological sex, or a separate single-stall restroom office, was unconstitutional. The Fourth Circuit opined that a school district policy mandating students to use restrooms corresponding with their biological sex violated Title IX. The school then appealed the Fourth Circuit’s Decision to the Supreme Court of the United States. After initially granting certiorari, the Supreme Court ultimately decided not to hear the case and vacated the Fourth Circuit’s decision, remanding the case for further findings. This was following the issuance of the Trump Administration Guidance. The Fourth Circuit has most recently denied the school’s Motion to Dismiss.

Based on the significance of this issue, it seems likely that the Supreme Court of the United States will take on one of these cases in the future and attempt to provide clarity for all individuals involved. Until then, it is expected that similar lawsuits will continue to be filed and litigated around the country.

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July 11, 2018