



U.S. Supreme Court Blocks Order Allowing Transgender Restroom Choice

August 11, 2016

On August 3, 2016, amidst national debate over transgender rights, the United States Supreme Court temporarily blocked a court order that had allowed a transgender student to use the boys' restrooms in a Virginia high school.

Gavin Grimm, who was born female but identifies as a male, is scheduled to commence his senior year at Gloucester High School in southern Virginia this fall. High school administrators allowed Grimm to use the boys' restroom for a period of time; however, the local school board soon adopted a policy that mandated that all students use the restroom and locker room of their "corresponding biological genders." The school board's policy further stated that "students with gender identity issues" would be permitted to use the school's private restrooms. Grimm sued the Gloucester County School Board and the Fourth Circuit in Richmond, Virginia held that the school board's policy was unlawful. A trial judge subsequently ordered that, in light of the decision, school administrators must allow Grimm to use the boys' restroom. Since then, the school board indicated that it would file a petition in late August asking the Supreme Court to hear its appeal; however, in the meantime, the school board submitted an emergency application to the Court requesting that the justices permit school administrators to continue to bar Grimm from using the boys' restrooms.

The Supreme Court's vote to block the trial court order was 5 to 3. Justice Breyer joined the Court's conservative justices, indicating that this would "preserve the status quo" until the Court could decide whether or not to hear the case. Justices Ginsburg, Sotomayor and Kagan dissented. CNN contributor and law professor Steve Vladeck said that "[t]he order comes as something of a surprise given the current composition of the court."

While the nature of the decision may come as a surprise, the discussion and debate over transgender rights have become familiar. For example, the U.S. Department of Justice is suing North Carolina over its law that requires transgender individuals to use the restrooms in government buildings that correspond with the gender listed on their birth certificates. This law has not only sparked lawsuits but has also drawn protests and boycotts by companies doing business with and in the state.

Additionally, in May 2016, the U.S. Department of Education's Office of Civil Rights, the government agency that enforces and ensures compliance with Title IX, released a Dear Colleague Letter regarding transgender issues aimed at public and private schools nationally. Specifically, the Office of Civil Rights indicated that, while Title IX permits schools to provide separate facilities on the basis of sex, students must be permitted to access facilities consistent with their gender identity and must not be forced to use facilities inconsistent with that identity. The

Office of Civil Rights and the Department of Education relied on the Fourth Circuit's decision in *G.G. ex rel. Grimm v. Gloucester County School Board*, stating that their interpretation of Title IX "is consistent with courts' and other agencies' interpretations of federal laws prohibiting sex discrimination."

In any event, the Court's decision on August 3, 2016, means that, for now, "the relationship between transgender identity and sex discrimination will be left in limbo until the Supreme Court resolves it one way or the other" said Steve Vladeck. While the Court has not yet determined exactly what Title IX means for transgender students across the county, growing national interest in the matter and the general public's attitude regarding transgender rights indicate that this issue will be settled soon. Public and private high schools and universities receiving federal funding should keep a close eye on the Court's decision and make changes in policy and implementation, if necessary, in the near future.

If you or your institution has any questions or concerns regarding education or employment related issues, please contact Hayley B. Dryer at hdryer@cullenanddykman.com or at 516-357-3745.

Thank you to Bridget Hart, a summer associate at Cullen and Dykman, for her assistance with this blog post.