



Transgender Students Find Success in Pennsylvania Federal Court

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Three transgender high school students in Pittsburgh recently prevailed in federal court in temporarily halting a school district policy requiring the students to use restrooms that do not conform with their gender identities. The Pennsylvania court's decision comes just a week after the Trump administration announced that it would rescind guidance issued by the Obama administration in May 2016, which directed schools to allow students to use bathrooms and locker rooms that corresponded to their gender identities.

The three high school students argued that the Pine-Richland School District discriminated against them when it recently passed a school board resolution that requires students to use restroom facilities that correspond with their "biological sex" or unisex private facilities. The policy was passed in September 2016. In October 2016, the three plaintiffs, Juliet Evancho and Elissa Ridenour, who identify as female, and minor A.S., who identifies as male, filed a lawsuit, claiming that the new policy "would marginalize and stigmatize them among their classmates" and finding that "they faced increasing harassment after the policy was enacted." The students filed a lawsuit in Pennsylvania federal court and then sought a preliminary injunction that would temporarily halt implementation of the policy and allow them to use the restrooms and locker rooms that correspond to their gender identities, while they challenge the overall constitutionality of the policy.

In a 48-page [decision](#), U.S. District Judge Mark R. Hornak granted the preliminary injunction, finding that the students established a "reasonable likelihood of success on the merits of an Equal Protection Clause [of the Fourteen Amendment] claim." Judge Hornak stated that, under the policy, "plaintiffs would be forced to use restrooms that don't match their identity, causing them to be treated differently than other students based on their gender or sex." His opinion asserted that the school board resolution discriminates based on transgender status. Further, the judge explained, "[j]ust as other courts have recently concluded, for these analytical purposes, that discrimination based on transgender status in these circumstances is essentially the epitome of discrimination based on gender nonconformity, making differentiation based on transgender status akin to discrimination based on sex for these purposes."

Interestingly, Judge Hornak did not find that there was a likelihood of success on the merits of the students' Title IX discrimination claims. Title IX of the Education Amendments of 1972 ("Title IX") states, in part, "[n]o 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." In this regard, Judge Hornak pointed to uncertainty regarding the recent policy changes implemented by the Trump

administration and the pending [U.S. Supreme Court](#) case of Gavin Grimm, a transgender student who is challenging a policy banning him from using the boys' bathroom as a violation of Title IX.

Omar Gonzalez-Pagan, a Lambda Legal Staff Attorney representing the Pine-Richland students, stated, "[n]otwithstanding the Trump administration's misguided and cruel actions last week, the court today found that the school's policy barring transgender students from the restroom that matches who they are violates the Equal Protection Clause of the U.S. Constitution." He further asserted that "[e]very student must be respected for who they are and be afforded the equal educational opportunity."

Lawmakers, judges, and school officials across the country are struggling to find clarity regarding the rights of transgender students and restroom use at schools. School administrators must continue to apprise themselves of any changes in this largely-unsettled area of the law.

If you have any questions or concerns regarding education issues, please contact Hayley B. Dryer at HDryer@cullenanddykman.com or at 516-357-3745.

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

*Please note that this is a general description of law and does not constitute legal advice.