



Transgender Legal Update (Jan. 22, 2018)

*For many years, PSBA has urged its members to work with transgender students and their families to meet the needs of individual students and to provide them with a safe and supportive school environment. In addition to regular updates on the law, PSBA has provided in-depth training and materials on practical ways to accommodate transgender students. There are lawsuits pending in Pennsylvania and the United States that still must be finally decided before PSBA can definitively determine whether Title IX and the United States Constitution Equal Protection Clause of the Fourteenth Amendment legally protect individuals from discrimination on the basis of gender identity. In addition to Title IX and Equal Protection cases, some transgender students may also seek accommodations pursuant to the Americans with Disabilities Act or Section 504 because the transgender student suffers from gender dysphoria, a recognized mental health disorder experienced by some members of the transgender population. Meanwhile, cisgender students are pursuing legal claims to use single-sex facilities without the presence of transgender students. **Presently, the trend in the courts seems to favor transgender students' rights, while noting that there are a variety of ways to accommodate every student's privacy interests, e.g. through single-user or partitioned changing areas. Links to current information on key cases are found at the end of this article.***

Terminology

- “Cisgender” describes individuals whose gender identity aligns with their biological sex at birth, i.e., a person born as a biological girl identifies as a girl.
- “Transgender” individuals’ gender identity differs from their biological sex at birth. A transgender person born as a biological girl identifies as male.
- “Gender expression” is how one presents to the world, i.e., dress, hairstyle, kind of jewelry used, makeup, etc. It may or may not reflect a person’s gender identity. In discussions about gender, you will hear additional terminology which is reflected in some school districts’ policies and which will likely emerge in discrimination law suits.
- “Gender Expansive” is term broadly applicable to individuals whose gender identity and gender expression presents outside of gender norms for their society or context.
- “Gender Dysphoria” is a formal DSM -5 diagnosis in which, for at least a six-month period, an individual exhibits strong, persistent cross-gender identification as established through a variety of behaviors and persistent discomfort with his or her biological sex or sense of feeling inappropriate in the gender role of his or her assigned sex at birth.

Legal Conflicts: Title IX

Prohibitions and remedies:

Title IX prohibits discrimination in government programs on the basis of sex. Public schools are subject to Title IX and complaints may be investigated by the U. S. Department of Education Office for Civil Rights (OCR). In

addition, individuals may file private lawsuits claiming violations of Title IX. In private lawsuits, remedies for successful plaintiffs can include injunctive relief, compensatory damages, attorneys' fees and costs. Title IX regulations permit but do not require designation of sex-segregated facilities such as girls' and boys' bathrooms and locker rooms.

What is the definition of "sex," for purposes of Title IX coverage?

Title IX does not define the word "sex." Some cases have focused closely on this issue with one party claiming that transgender students are not protected based under Title IX because they are biologically a particular sex and it is not sex discrimination to require a biological female to use the girls' restroom. Others argue that it is discrimination based on sex because the student's gender identity is male and he is prohibited from using the boys' restroom. However, these disputes over the definition of the word "sex," while relevant, are less the focus of some recent court decisions. Instead, parties are increasingly relying on cases identifying different ways to prove sex discrimination that have evolved in the courts, often in employment discrimination cases.

Sex discrimination based on sexual stereotyping

In 1989, the U.S. Supreme Court recognized that making employment decisions based on sexual stereotyping could violate Title VII's prohibition against sex discrimination. Although her partners in her office strongly supported the plaintiff's being made a partner in a nationwide accounting firm, others successfully argued consideration of her for partner should be put on hold. In part, this was based on comments that she was sometimes "overly aggressive, unduly harsh, difficult to work with and impatient with staff." She was described as "macho," as overcompensating for being a woman, as being unladylike because she used profanity, as needing a charm school course and as being somewhat masculine. When her partnership was put on hold, she was told that to improve her chances she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled and wear jewelry." The Court found there was sufficient evidence to support the plaintiff's claim that her gender played a role in the adverse employment decision because she was expected to behave differently from the candidates who were granted partnership, all men, in order to be promoted. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

While the federal and Pennsylvania anti-discrimination laws do not protect individuals from discrimination based on sexual orientation, sex stereotyping arguments have been used successfully by homosexual plaintiffs to pursue sex discrimination cases based on arguments that their failure to live up to gender stereotypes resulted in an adverse employment action. *Prowel v. Wise Business Forms, Inc.*, 579 F. 3d 285 (3rd Cir. 2009).

Transgender students in Ohio and Wisconsin have pursued their Title IX claims alleging that they are being subjected to discriminatory sexual stereotyping.

Hostile environment sex discrimination

Title IX sex discrimination claims may encompass a sexual harassment hostile environment claim, which requires the plaintiff to prove several elements to prevail.

- In a Title IX case, the discriminatory harassment complained of must be based on the student's sex. (Liability may be attributed to a school district if it has not put into place a widely disseminated policy prohibiting discriminatory harassment and implementing an effective complaint procedure.)
- The behavior complained of must be unwelcome to the plaintiff

- The behavior complained of must be so severe, pervasive and **objectively** offensive that it undermines and detracts from the plaintiff's educational experience, thus denying him or her equal access to an educational institution's resources and opportunities.

These cases are very fact driven and require consideration of the totality of the circumstances including things such as the ages of the alleged harasser and victim and nature and number of incidents. A violation will not be based on simple acts of name-calling and teasing among students in school, even where it is arguably gender based. However, a pattern of this kind of behavior over a period of time could become a violation.

Some transgender students assert that requiring them to use facilities based on biological sex rather than gender identity constitutes hostile environment sex discrimination. In a case brought against one Pennsylvania school district, cisgender students are asserting that a school district's practice of permitting transgender students to use the single-sex locker rooms and bathrooms aligned with their gender identity constitutes hostile environment sex discrimination. This update addresses a recent court opinion denying the plaintiffs' motion for a preliminary injunction.

U.S. Constitutional Claims: Equal Protection/Bodily Privacy

- Cases brought by transgender students typically include that forcing them to use sex-segregated facilities based on their biological/birth gender instead of based on gender identity violates their right to Equal Protection under the law as protected by the Fourteenth Amendment to the U.S. Constitution.
- Cases brought by cisgender students argue that their constitutional right to privacy, protected by the Fourteenth Amendment to the U.S. Constitution, is abridged by permitting people who are biologically one sex to use facilities designated for the other sex.

Equal Protection Standard of Review

Equal Protection Clause cases arise when the government takes action that affects identifiable classes of people differently. Courts must consider whether the classifications were permissible in connection with the purpose of the government action. There are three different levels of review used by the courts, depending on the classification used.

- Lowest level – rational basis

Generally, a court will look at whether the government had a rational basis for taking action based on a particular classification to carry out a legitimate governmental purpose. For example, citizens must be 18 years old to vote and those under 18 may not vote. The rational basis for this age cut off might be that by 18, students have typically completed all or most of their secondary education and are mature enough to become informed voters.

- Highest level – strict scrutiny

When classifications are based on peoples' race or national origin, they are subject to the most serious level of review, "strict scrutiny" and the government must prove that the reasons for the racial classification are:

- clearly identified; and
- unquestionably legitimate; and

- narrowly tailored to further compelling government interests.

For example, this strict scrutiny level of review has applied to university programs seeking to increase diversity by considering an applicant's race as one of many "plus" factors in admissions if the applicant's race would increase diversity.

- Middle level – heightened or intermediate level of scrutiny

For this level of review, which includes sex, other groups may be added to the kinds of classes subject to intermediate scrutiny. This will be determined based on history of discrimination, that the classification frequently has no bearing on their contributions to society or ability to perform, that the class exhibits obvious and immutable or distinguishing characteristics that define them as a discrete group and that the class is a minority or politically powerless, a heightened standard of review applies. When government makes decisions, or takes action affecting groups entitled to an intermediate level of scrutiny, it must show the classification:

- serves important governmental objectives; and
- uses the least discriminatory means to achieve the objective

For example, this standard applied when women sought admission to Virginia's only single-sex college, Virginia Military Institute.

In disputes brought by transgender students, there is inevitably a dispute over the level of review to apply as between the rational basis and heightened scrutiny standards. Most courts have found that the heightened scrutiny review applies either because decisions relating to transgender students' use of sex segregated facilities are based on sex or because transgender individuals' meet the factors necessary to entitle them as a class to enjoy this heightened level of review. In other words, these lower courts generally agree that when school districts or other governmental entities make decisions or take actions which limit a transgender student's rights, they must be prepared to show this serves important governmental objectives or uses the least discriminatory means to achieve the objective. This has not been finally decided by the U.S. Supreme Court, the Third Circuit Court of Appeals or any Pennsylvania appellate court.

Americans with Disabilities Act/Section 504

When a student diagnosed with gender dysphoria, a recognized disability, seeks reasonable accommodations, he or she might have a viable discrimination claim against a school district under the ADA or Section 504 if a school district fails to accommodate him or her.

Feb. 22, 2017 Guidance from U.S. Departments of Justice and Education

Citing the need to give guidance to the U.S. Supreme Court in the *G.G.* case from Virginia (discussed below), the Trump administration issued a two-page Dear Colleague letter withdrawing the Obama administration's May 13, 2016, statements of guidance and policy on transgender students as well as a similar policy letter on the topic issued by the Department of Education on Jan. 7, 2015. The letter states, "These guidance documents take the position that the prohibitions on discrimination 'on the basis of sex' in Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and its implementing regulations, see, e.g., 34 C.F.R. § 106.33, require access to sex-segregated facilities based on gender identity. These guidance documents do not, however, 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." Citing a need for local school districts and states to take a primary role in decisions regarding educational policy, the significant amount of litigation engendered on both sides of this issue, and the fact that there was an injunction in place against enforcement of the

Obama administration guidance, the Trump administration withdrew and rescinded the Obama administration guidance. “The Departments thus will not rely on the views expressed within them.”

The letter emphasizes that students have the right to continued protection from discrimination, bullying and harassment. “All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment. The Department of Education Office for Civil Rights will continue its duty under law to hear all claims of discrimination and will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms.” However, it does not further suggest an interpretation of existing law or add to existing law in any way.

Pennsylvania Policy matters affecting transgender students

- **Birth Certificates, Aug. 8, 2016** – Policy permitting birth certificate to be amended to reflect different gender. <http://www.transequality.org/sites/default/files/docs/PA-BC-Policy.pdf>
- **PIMS Gender Reporting, Aug. 1, 2017** – Pennsylvania Department of Education Pennsylvania Information Management System (PIMS) manual on reporting student gender, page 20:

A student or parent/guardian may request a change of the student’s listed gender, first name or middle name on their records. If this request occurs, the local education agency may report the student’s preferred information using the following guidelines:

- The change must first be made in PAMailID.
- The PIMS data (first name, gender, and date of birth) must match what is reported in PAMailID.
- The student’s name and gender information reported in prior school years will not be updated.
- The student’s PAMailID will not be changed.

<http://www.education.pa.gov/Documents/Teachers-Administrators/PIMS/PIMS%20Manuals/2016-2017%20PIMS%20Manual%20Volume%201.pdf>

Are there any lawsuits pending or recently resolved in Pennsylvania regarding transgender students or issues which might arise in Pennsylvania schools?

Yes, links to rulings and other information on these cases are at the end of this update.

1. Pine-Richland School District case brought by transgender students

On Oct. 6, 2016, several transgender plaintiffs sued Pine-Richland School District for formally adopting a requirement that students use either the facilities that correspond to their biological sex or unisex facilities. The students alleged violation of Title IX and the Equal Protection Clause of the United States Constitution.

On Feb. 27, 2017, the court issued a preliminary injunction against the school district and in favor of the plaintiffs in this case, holding they are likely to succeed on the claim that a resolution forcing them to use restrooms which either are single-user or those corresponding with their biological sex violates their right to Equal Protection under the law as guaranteed by the Fourteenth Amendment.

In July 2017, this case was settled, with the school board voting to rescind the policy. The students received monetary settlements and legal fees and the district agreed to update its anti-discrimination policy to include gender identity.

2. Boyertown Area School District case brought by cisgender students

In March 2017, a cisgender male student sued Boyertown Area School District for permitting a transgender student who is anatomically female to use the boys' locker room to change for gym class. The complaint was later amended to include three other cisgender students, one male and two females, who opposed the practice. Pennsylvania Youth Congress Foundation intervened on behalf of potentially affected transgender students. The school board had not adopted a formal policy on this issue.

The students allege violations of their constitutional right to bodily privacy when using locker rooms and restrooms designated for either boys or girls if a transgender student is permitted to use the facilities congruent with their sexual identity. Specifically, they suggest that this is a practice by the school district which allows students to use single-sex facilities designated for the "opposite sex." The plaintiffs assert they have been subjected to a sexually hostile environment in violation of Title IX. They requested that the court issue a preliminary injunction during the time the case moves forward to prohibit the school from continuing this practice.

On Aug. 25, 2017, the court denied the preliminary injunction, which means that the current school district practice may continue during the litigation of the underlying claims in the law suit. The court found that the cisgender plaintiffs are unlikely to succeed on the merits of the case, in part because the district offers multiple options to use private bathroom and changing areas to all students who seek privacy, whether they are cisgender or transgender students. The cisgender plaintiffs could not show that the nature of the alleged intrusion into their bodily privacy meets the standards necessary to prove a constitutional violation. Under Title IX, given that all students, regardless of gender, were treated similarly, the plaintiffs could not show that any of the district's practices amount to discrimination based on sex, which is necessary to prove a Title IX violation.

On Sept. 25, 2017, the plaintiffs appealed the denial of the preliminary injunction to the Third Circuit Court of Appeals

3. Minersville Area School District case brought by transgender student

In March 2017, an elementary school transgender female student sued Minersville Area School District alleging sex discrimination in violation of Title IX and an Equal Protection Clause claim alleging the student has requested to use restroom facilities congruent with her sexual identity. The student asserts the district has variously required her to use the men's restroom, a separate "unisex" restroom or to wait until the girls' restroom was cleared to use that restroom. On June 13, 2017, the district filed a motion to dismiss which was denied by the Court on Nov. 22, 2017. The school district filed an answer to the plaintiff's amended complaint on December 6, 2017.

4. Employee case brought against Cabela's for failure to accommodate disability

In May 2017, a district court denied a motion to dismiss an employment discrimination case brought by a transgender female employee against Cabela's for failure to accommodate her gender dysphoria. The court rejected the employer's argument that the exclusion of gender identity disorders in 42 U.S.C. §12211 extends to the disabling condition of gender dysphoria. Accommodations she sought which were rejected included denying her a female nametag and uniform and use of the female restroom. The employee's claim of retaliation for opposing disability discrimination was also permitted to go forward.

What is the status of school district lawsuits outside of Pennsylvania?

NOTE: Links to rulings and other information on these cases are at the bottom of this update.

Transgender students in Ohio (Highland Local School District) and Wisconsin (Kenosha Unified School District) were granted preliminary injunctions permitting them to use the facilities aligned with their gender identity until the cases are fully litigated. The Sixth and Seventh Circuit Courts of Appeals have upheld the preliminary injunctions. This means that the courts believe the transgender students are likely to prevail on the merits of their cases and will be irreparably harmed if the injunction does not stay in place during the course of the litigation of their cases. On Jan. 10, 2018, Kenosha Unified School District settled the Seventh Circuit case for \$800,000. In a case from Virginia, that famously worked its way up to the Supreme Court, the case has been remanded from the Fourth Circuit Court of Appeals to the district court to decide whether the case is moot, since the student has graduated.

In Illinois (Township HSD 211), cisgender students (Students and Parents for Privacy) filed a lawsuit against the U.S. Departments of Education and Justice to prevent them from requiring the school district to allow transgender students to use facilities aligned with their gender identity. They argued that this violates their constitutional right to privacy. The cisgender plaintiffs sought a preliminary injunction to prevent transgender students from using sex-segregated facilities aligned with their gender identity. While the lawsuit was originally brought against enforcement of the Obama administration's transgender student guidance, these claims were dropped when the Trump administration issued its guidance reversing course on enforcement of the prior guidance. By then, transgender students had intervened in the case and opposed the injunction. A transgender girl sued the same school district on Dec. 1, 2017, seeking access to use the girls' locker room during physical education. On Dec. 29, 2017, the court denied the injunction. In addition to the fact Illinois is in the Seventh Circuit, which found against a school district seeking to prohibit transgender students from using facilities aligned with their gender identity, the court made it clear that the plaintiffs could not prevail on the merits. Some of the points it made included:

- Sex discrimination laws protect individuals from discrimination based on sex-stereotyping, which is what a school is doing when it does not permit transgender students to use the facilities aligned with their gender identity. It is punishment for gender nonconformance;
- There is not a legal distinction between transgender students' cases seeking to use sex-segregated restrooms aligned with gender identity and seeking to use sex-segregated locker rooms aligned with their gender identity, particularly where there are privacy stalls and curtains available;
- Permitting transgender students to use sex-segregated facilities aligned with their gender identity does not involve "forced or extreme" invasions of privacy. These restrooms have privacy stalls and single-user facilities are available to all students upon request. "Given these protections, there is no meaningful risk that a student's unclothed body need be seen by any other person." Additionally, a transgender student's presence does not provide a greater risk of invasion of privacy than any other student of the same biological sex using the facilities at the same time or protect students more from students of the same biological sex who decide "to sneak glances at his or her classmates performing bodily functions."

Further, the plaintiffs could not demonstrate a required element for an injunction, that failure to grant it would result in irreparable harm to the plaintiff cisgender students. They argued that use of single-user facilities to avoid sharing with transgender students might make them late to class. The court found this was not irreparably harmful in that there was no evidence this interfered with their education. Any harm related to embarrassment or emotional distress is compensable with money damages. Further, "...either Student Plaintiffs did not notice that transgender students were using restrooms consistent with their gender identity

or they knew and tolerated it for several years ... ‘there is no indication that anything has negatively impacted Girl Plaintiffs’ education.’” The passage of years in which the policy was in place combined with the lack of educational deprivation upholds the inability to show irreparable harm.

PSBA

Policies

PSBA Policy Services writes and issues legally compliant policies for school districts to use. PSBA has received model policies and feedback from stakeholders on each side of this important issue passionately arguing that PSBA should issue a policy guide on transgender students and sex-segregated facilities. PSBA is still unable to issue a policy guide on this. The law is not only unsettled, but there are active cases supporting opposite views which will decide this one way or the other. For this reason, we have urged local school districts to develop procedures to work with transgender students and to accommodate them as they are able to and to also work with cisgender students with privacy concerns. If a local school district wishes to adopt policy, we recommend they do so in consultation with their solicitor and the community. We urge them to be sensitive to the needs of transgender students, a vulnerable community who need protection and support.

Training

PSBA has offered live training to members in Spring Legal Roundup, [School Leadership Conference](#) and at the Solicitors’ Symposium. One of these trainings is available for free through the PSBA training portal: **PSBA**

Training Portal – Video CFR-109 Supporting Transgender Students

<https://training.psba.org/ets/store/>

The link includes live training session, articles and materials regarding transgender students.

Articles and up-to-the-minute ‘blasts’

Look to *DailyEdition*, the *Bulletin* and emails for information on transgender issues.

Resources and links to orders and opinions discussed above

Pennsylvania lawsuits brought by transgender students against public school districts

Evancho, et al v. Pine-Richland School District, et al, 2:16-cv-01537 (W.D. Pa. 2016)

Sept. 12, 2016: Resolution adopted (9/13/16 article)

<http://www.post-gazette.com/local/north/2016/09/13/Pine-Richland-school-board-switches-bathroom-policy-for-transgender-students-pittsburgh/stories/201609130146>

This resolution agreed to by a majority of the board of directors of the Pine-Richland School District indicates our support to return to the long-standing practice of providing sex-specific facility usage. All students will have the choice of using either the facilities that correspond to their biological sex or unisex facilities. This practice will remain in place until such time that a policy may be developed and approved.

Oct. 6, 2016: Complaint by transgender students alleging violation of Title IX and right to Equal Protection under the U.S. Constitution

http://www.lambdalegal.org/sites/default/files/evancho_pa_20161006_complaint_0.pdf

Nov. 14, 2016: Pine-Richland’s Motion to Dismiss students’ case

<https://cdn-files.nsba.org/s3fs-public/reports/Motion%20to%20Dismiss.pdf?BzCljheDHMSMqcaGtl2M5diFUSzBuCT8>

Feb. 27, 2017: Court enters preliminary injunction on behalf of Pine-Richland plaintiffs

- Evancho Opinion – <https://www.psba.org/wp-content/uploads/2017/02/Evancho-Opinion.pdf>
- Evancho Order — <https://www.psba.org/wp-content/uploads/2017/02/Evancho-Order.pdf>

July 2017: Lawsuit settled favorably to student plaintiffs including legal fees and money damages

- <http://wesa.fm/post/transgender-students-who-sued-because-restrictive-bathroom-policy-settle-district#stream/0>
- <http://pittsburgh.cbslocal.com/2017/08/08/pine-richland-transgender-bathroom-settlement-payout/>

A.H. v. Minersville Area School District, Civil No. 3:17-cv-00391-RDM

Nov. 27, 2017: School District Motion to Dismiss denied: https://www.psba.org/wp-content/uploads/2017/12/A_H_v_Minersville_Area_School_District.pdf

Pennsylvania lawsuit brought by cisgender students opposing district’s practice of permitting transgender students to use single-sex, multiuser bathrooms and changing areas.

Doe v. Boyertown Area School District, et al, 5:17-cv-01249-EGS (E.D. 2017)

Aug. 25, 2017: *Doe v. Boyertown* opinion and order denying preliminary injunction:

https://scholar.google.com/scholar_case?case=3652200939439176860&q=Boyertown+area+school+district&hl=en&as_sdt=6,39&as_ylo=2017

Sept. 25, 2017: Plaintiffs appeal Aug. 25, 2017, opinion to Third Circuit:

<https://adfllegal.blob.core.windows.net/web-content-dev/docs/default-source/documents/case-documents/doe-v.-boyertown-area-school-district/doeboyertownappealnotice.pdf?sfvrsn=4>

Article on the appeal: <http://www.mcall.com/news/police/>

Miscellaneous pending school district cases nationwide

G.G. v. Gloucester County School Board, No. 15-2056 (4th Cir. 2016)

Complaint: <https://www.aclu.org/legal-document/gg-v-gloucester-complaint>

April 19, 2016: Opinion of the Fourth Circuit Court of Appeals:

<http://apps.washingtonpost.com/g/documents/local/court-opinion-4th-circuit-sides-with-transgender-high-school-student-suing-school-board-for-access-to-boys-bathroom/1960/>

March 6, 2017: U.S. Supreme Court Docket in *G.G.* Order:

Judgment VACATED and case REMANDED to the United States Court of Appeals for the Fourth Circuit for further consideration in light of the guidance document issued by the Department of Education and Department of Justice on Feb. 22, 2017.

<https://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/16-273.htm>

Aug. 2, 2017: Fourth Circuit Order – Remanding case to district court to determine whether case is moot due to *G.G.*’s graduation

https://scholar.google.com/scholar_case?case=6550481515616772353&q=Grimm+Gloucester&hl=en&as_sdt=4,109,124&as_ylo=2017

***Whitaker v. Kenosha Unified School District No. 1 Board of Education, et al*, No. 16-cv-943-PP (E.D. WI 2016)**

Sept. 22, 2016: Decision and Order Granting in Part Motion for Preliminary Injunction:

https://scholar.google.com/scholar_case?case=53852615989164578&q=Whitaker+Kenosha+preliminary+injunction&hl=en&as_sdt=6,39

May 30, 2017: Seventh Circuit Opinion upholding preliminary injunction on behalf of transgender plaintiffs:

https://scholar.google.com/scholar_case?case=9489172744748605764&q=Whitaker+Kenosha&hl=en&as_sdt=6,39

Aug. 25, 2017: School District Petition for a Writ of Certiorari of May 30, 2017 order to U.S. Supreme Court:

<http://transgenderlawcenter.org/wp-content/uploads/2016/08/USSC-Petition-for-Writ-of-Certiorari.pdf>

Jan. 10, 2018: Kenosha Unified settles case for \$800,000: http://www.kenoshanews.com/news/local/unified-settles-transgender-lawsuit/article_b90c8ac8-9b9e-511c-b01b-f59102c7578a.html

***Board of Education of Highland Local School District v. United States Department of Education*, No. 216-cv-524 (S.D. Ohio) NOTE: “Jane Doe,” the student intervened as third-party plaintiff, suing school district**

Sept. 26, 2016: Preliminary injunction allowing transgender student use of facilities congruent with gender

identity: http://www.nclrights.org/wp-content/uploads/2016/10/Highland-Local-School-District-v.-U.S.-Dept.-of-Educ._Order-on-PI-motions.pdf

Dec. 15, 2016: Split Sixth Circuit declines to stay the preliminary injunction so student continues to use restroom in accordance with gender identity rather than biological sex:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/16a0291p-06.pdf>

***Students and Parents for Privacy, et al v. U.S. Department of Education, et al*, 16-cv-4945 (N.D. Ill. 2016)**

Oct. 18, 2016: Magistrate Judge recommends that the district court should deny plaintiffs’ request for a preliminary injunction against implementation of the school district policy which allows transgender students use of facilities congruent with gender identity:

<http://www.politico.com/f/?id=00000157-d93c-dc39-a7df-f9bf7d1e0002>

Dec. 1, 2017: Transgender girl sues same school district for locker room access: https://www.aclu-il.org/sites/default/files/mayday_v._d211_complaint.pdf

Dec. 29, 2017: Court affirms magistrate judge’s recommendation and further notes that this is consistent with Seventh Circuit decision in Kenosha Unified:

https://scholar.google.com/scholar_case?case=7098504143739794244&q=Students+and+Parents+for+Privacy+Illinois&hl=en&as_sdt=6,39&as_ylo=2017

NSBA-generated information

- NSBA Legal Clips – <http://legalclips.nsba.org>
Provides current news and information on cases and transgender issues along with other legal matters nationwide. (Now a subscription service)
- NSBA FAQs on Transgender Students – <https://www.nsba.org/nsba-faqs-transgender-students-schools>

Extensive guidance on many questions faced by school districts with discussions of a variety of questions faced day to day. (updated as law develops so check back frequently)