



Transgender Rights – Where Does Pennsylvania Fit In?

Insights

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With the recent buzz about President Donald Trump’s removal of federal protections for transgender students that were implemented under the Obama Administration, the states and school systems have been left to determine if and how to implement protections for transgender students.

While there is no state law in Pennsylvania that specifically addresses transgender students’ access to bathrooms, lockers, and the like, a growing number of school districts have adopted policies that protect transgender students. In Philadelphia, for example, the school district has enacted a sweeping directive that allows transgender students to use the bathroom that matches the student’s gender identity, be referred to by the pronoun that matches the student’s gender identity, and participate on athletic teams appropriate for the student’s gender identity. Montgomery County Upper Dublin School District and the Lower Merion School District have adopted similar policies.

On the other hand, some Pennsylvania school districts have attempted to remove protections that transgender students were previously afforded. Most recently, the Pine-Richland School District’s Board of Directors passed a controversial resolution, dubbed “Resolution 2,” that forced students to use restrooms that do not match their gender identities.

In [Evancho v. Pine-Richland School District](#), case number 2:16-CV-0153, three students from the School District filed an injunction, which was granted by U.S. District Judge for the Western District of Pennsylvania Mark R. Hornak. Judge Hornak found that the students demonstrated a reasonable likelihood of success on the merits of an Equal Protection Clause claim based on the students’ gender or sex (i.e., forcing the students to use restrooms that do not match their gender identity would effectively cause the students to be treated differently than other students based on their gender or sex).

Following the Court’s imposition of the injunction, the Pine-Richland School District agreed, as part of a settlement with the three transgender students who brought the lawsuit, to drop the policy, Resolution 2, requiring transgender students to use restrooms that do not conform with their gender identities.

Based on the settlement, the School District is now blocked from enforcing “any policy, practice, or custom of the Pine-Richland School District and/or Pine-Richland High School that denies

transgender students access and use of restrooms that match a student's consistently and uniformly asserted gender." Therefore, Resolution 2 has been abolished.

While the spotlight has often been on transgender rights of students, no state legislation has been successfully proposed to protect transgender people at work in Pennsylvania either. In Pennsylvania, state employers (recipients of state grants and contractors doing business with the state) are now prohibited from discriminating against their employees based on their sexual orientation, gender expression, or gender identity. Certain municipalities (Philadelphia, Pittsburgh, Lancaster, Erie, Scranton, Harrisburg, and others) have also passed separate ordinances implementing the same or similar protections.

Largely, however, Pennsylvania employers are left without clear rules related to affording protections to transgender employees. Nevertheless, based on Judge Hornak's Order in [Evancho v. Pine-Richland School District](#), Pennsylvania employers should be very wary of adopting any policies or procedures that do not protect the rights of transgender employees.

Please contact your Fisher Phillips attorney to discuss further.