



# Three Things You Need To Know: School Ordered To Allow Girls' Locker Room Access To Transgender Student

Insights

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Should anatomically male transgender high school students who identify as female be allowed to use female locker rooms? In what has been described as a “momentous” decision, the Department of Education Office of Civil Rights concluded that a school’s refusal to allow a transgender student to use a female locker room violated Title IX.

## Summary Of The Facts

According to the November 2, 2015 decision, “Student A” was born a male but identified as female from a young age. Prior to beginning high school, Student A presented a female appearance, completed a legal name change, obtained a passport reflecting a gender change, received a diagnosis of and treatment of gender dysphoria, and had begun an ongoing course of hormone therapy.

Prior to enrolling in high school, Student A’s parents met with Illinois’ Palatine Township High School District 211’s administration and asked for an accommodation of Student A’s gender identity. The School District honored Student A’s request to be treated as female in almost all respects; among other things, the school allowed Student A to use the girls’ bathroom and participate in girls’ athletics.

However, the school would now allow Student A access to the girls’ locker rooms. It informed Student A that separate restroom facilities were available for changing clothes prior to mandatory PE classes and athletic team practices and competitions.

## Momentous Decision Forces School To Change Course

Student A filed a Title IX complaint with the Department of Education, which conducted a lengthy investigation culminating in the November 2 decision.

In its defense, the School District justified its decision to exclude Student A from the female locker rooms by articulating privacy concerns of other female students. It made two specific arguments: first, permitting Student A to be present in the locker room would expose female students to being observed while naked by a biologically male student; and second, doing so would expose female students as young as 15 to a biologically male body.

Without any analysis, the Department of Education's decision found those "concerns unavailing in this case." Instead, the Department of Education concluded there was a better way to reconcile those concerns with the Title IX rights of Student A by installing privacy curtains in the female locker room. The Department noted in conclusory fashion that offering alternative clothes-changing facilities to Student A were "not comparable to those provided other students," and thus did not satisfy Title IX.

### **Three Things You Need To Know**

There are three things you need to know about the Department of Education's decision:

#### **1. The scope of this decision is limited.**

It is worth noting the limited scope of the Department's determination. Title IX only applies to public schools and those educational entities that receive federal funds. The decision has no direct application to purely private K-12 schools.

#### **2. The impact of this decision is unclear.**

The Department of Education's decision does not provide clear guidance about the impact it will have on future cases. In fact, the decision includes a number of statements suggesting that the determination may be limited to the particular facts of the case.

Most significantly, it is not clear if the Department would come to the same conclusion if the case involved an elementary school for example, or if the complaining student had not taken significant steps to transition to female. In addition, the Department's decision seems to suggest that separate locker rooms may be permissible in certain circumstances, such as if they are comparable to the locker rooms used by other students.

#### **3. The road ahead will be full of twists and turns.**

For school administrators dealing with the issue of transgender students in both the private and public settings, this determination reaffirms the complex questions raised in this area. This topic screams for nuanced consideration of all impacted constituencies before making any decisions.

If you have any questions about this decision, or how it may affect your school, please contact your Fisher Phillips attorney or one of the attorneys in our Education Practice Group.

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*This Legal Alert provides an overview of a specific Department of Education decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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### **Industry Focus**

