Federal Court Rules In Favor Of Transgender Teen In Bathroom Case

Insights
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A federal court in Virginia ruled in favor a transgender teenager who wanted to use the boys' bathroom at his former school, finding that the local school district violated his constitutional rights when it prescribed which bathroom he should use. On May 22, the U.S. District Court for the Eastern District of Virginia sided with a growing number of courts when it concluded that sex discrimination can encompass a claim for discrimination on the basis of one's gender identity—in this case, under Title IX and the United States Constitution.

Transgender Teen Takes Bathroom Fight To The Supreme Court
Though still a teenager, Gavin Grimm is no stranger to the court system. He has taken his fight to use the boy's bathroom at school—the bathroom that corresponds with his gender identity—all the way to the Supreme Court. Gavin is a 2017 graduate of Gloucester High School. He is also a transgender male, meaning he was born anatomically female but identifies as male. Before the start of his tenth grade year, he asked to be allowed to use the boy's restroom and to be identified using male pronouns.

Initially, the school board granted his request. After Gavin began using the boys' restroom, however, certain members of the community (some of whom referred to him as a "young lady" or "freak") voiced concern about bathroom privacy and safety. In response, the school board implemented a policy limiting restroom and locker room use to students with the "corresponding biological genders," and allowing "students with sincere gender identity issues" to use an "alternative private facility."

Less than a week after the school board issued its policy, an attorney with the Department of Education's Office of Civil Rights provided an opinion letter stating that "a school generally must treat transgender students consistent with their gender identity." This letter was unpublished, and did not carry the force of law.

In June 2015, Gavin filed suit and sought an injunction to overturn the school's new policy. He alleged that by denying him access to the boy's restroom, the school board impermissibly discriminated against him on the basis of his sex in violation of Title IX of the U.S. Education Amendments of 1972 (a federal law that prohibits sex discrimination by schools that receive federal financial assistance) and the Equal Protection Clause of 14th Amendment to the United States Constitution. Among other things, Gavin cited to the Department of Education's opinion letter.

In September 2015, a lower federal court dismissed Gavin's lawsuit and denied his injunction, reasoning that Title IX permits the assignment of separate bathrooms on the basis of one's biological sex. The district court did not decide whether "sex" includes gender identity and declined to give any weight to the Department of Education's interpretation of "sex." Gavin appealed the decision to the 4th Circuit Court of Appeals (the federal appellate court for Maryland, North Carolina, South Carolina, Virginia and West Virginia).

The 4th Circuit reversed the district court's decision in April 2016, holding the lower court failed to give weight to the Department's interpretation of "sex." The appellate court recognized that Title IX prohibits entities that receive federal funding (such as public schools) from discriminating on the basis of a person's sex. It also recognized that Title IX allows public schools to provide separate restrooms and other facilities on the basis of sex so long as the facilities for both sexes are comparable. Problematic, however, is that Title IX is silent as to how these provisions apply to transgender students.

On remand, and after a few other procedural hurdles, the district court granted a preliminary injunction (one that it had previously denied). This time the school board appealed. While the appellate court initially declined to do so, the matter was ultimately stayed—or put on pause—pending a resolution by the U.S. Supreme Court.

Meanwhile, in May 2016, the Department of Education and the Department of Justice jointly published a "Dear Colleague Letter," which instructed public educational institutions to allow transgender students to use the bathrooms, locker rooms, and other facilities that correspond with their gender identity. Thirteen states responded with a lawsuit. Although these instructions were subsequently blocked, the Dear Colleague Letter solidified the Department of Education's stance on transgender student rights in public schools—at least, its temporary stance.

In October 2016, the parties obtained the ultimate legal golden ticket: the Supreme Court agreed to hear the case. Specifically, the Court agreed to resolve two questions of law: (1) whether unpublished agency letters that do not carry the force of law and that are adopted as part of the very dispute in which deference is sought are entitled to deference; and (2) whether, with or without deference, to give effect to the Department of Education's interpretation that Title IX requires transgender students in public schools to be treated consistent with their gender identities.

On February 22, 2017, just over a month after taking office, the Trump Administration withdrew the opinion letter that was the crux of the appellate court's opinion. Within a few weeks, the Supreme Court had no choice but to kick the case from its docket and send the matter back to the 4th Circuit for further consideration in light of the "new" Department of Education's guidance. In turn, the 4th Circuit vacated its prior decision and remanded the case all the way back down to the lower court.

The District Court Sides With Gavin

On remand, Gavin amended his complaint and sought to continue the fight. The school board swiftly moved to dismiss, asserting that the bathroom policy did not violate Title IX. It argued that Title IX

moved to dismiss, asserting that the bathroom policy did not violate Title IX. It argued that Title IX only permits claims based upon sex, not those based on gender identity. Similarly, the school board claimed that the policy didn't violate the Equal Protection Clause because transgender individuals are not members of a protected class.

Persuaded by cases (under both Title VII and Title IX) that have held discrimination based upon gender identity constitutes sex discrimination, the U.S. District Court for the Eastern District of Virginia rejected the school board's arguments in its May 22 decision. Following the reasoning of several appellate courts, the court held that "claims of discrimination on the basis of transgender status are per se actionable under a gender stereotyping theory" under Title IX. Accordingly, the court held that Gavin sufficiently alleged that he was discriminated against as a result of the school board's policy requiring him to use a bathroom that was incongruent to his gender identity.

Wrapping Things Up: What This Means for Your Organization

To be clear, the district court did not find that the school board's bathroom policy in fact violated Title IX and the Equal Protection Clause. Instead, it found that claims like Gavin's could arise under those bodies of law. So, while your organization may not need to modify current bathroom policies at this stage, it would be wise to consider what you would do if the law in your jurisdiction requires you to allow a transgender student to use the bathroom that corresponds with their gender identity. Remember, courts have been evaluating what protections, if any, the law affords transgender people for more than a decade. It seems like it will only be a matter of time before the Supreme Court weighs in.

In the meantime, employers and schools can expect the fight over trans-rights to continue. Navigating these politically and culturally complex waters can be difficult. Your Fisher Phillips attorney stands ready to assist you in crafting an approach that best supports all the stakeholders of your organization, as do the members of the firm's Education Practice Group.

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

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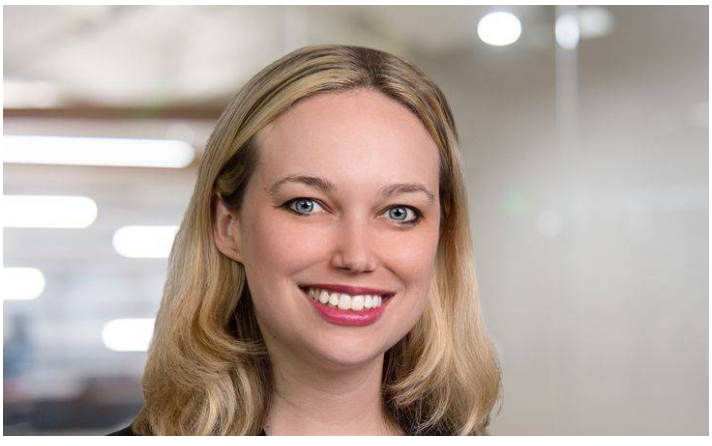

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