



Nov 04, 2015

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The Federal Government Takes a Strong Position on Transgender Students' Rights to Locker Room Access

The U.S. Department of Education's Office for Civil Rights (OCR) gave an Illinois School district 30 days to reach an agreement regarding a transgender student's access to the school's locker room. If the school district fails to reach an agreement it will face enforcement, which could come by means of a Justice Department action. Further, it is possible the school district will lose \$6 million in federal funding.

The OCR report stems from a nearly two-year investigation regarding a transgender student who is biologically male, but identifies as female. Citing the privacy of other students, the school board had required the transgender student to use a separate changing room. Although the report acknowledged that with respect to transgender rights, the school district was comparatively progressive by identifying the student "by her female name and with female pronouns, providing her with full access to all girls' restrooms, and allowing her to participate in girls' interscholastic athletics," it was not in compliance with federal law. OCR maintained that denying full access to the changing and showering facilities was a violation of the student's rights under Title IX.

Recently, the school district had come up with a plan it felt would alleviate the issue. The plan included the installation of a privacy curtain in the physical education locker room for the transgender student to change behind. The school argued this would allow the student equal opportunities without sacrificing the privacy of other students. OCR disagreed. First, OCR stated that the school did not install curtains in the school's locker rooms used for athletics and swimming. Further, OCR argued that the transgender student should not be mandated to use a curtain, but that the curtains should be available for all students. OCR stated, "Those female students wishing to protect their own private bodies from exposure

to being observed in a state of undress by other girls in the locker rooms, including transgender girls, could change behind a privacy curtain.” The school board has indicated it is willing to fight this decision.

What you need to know: This is a new and fluid area of the law that will surely continue to evolve. This report indicates that it is the Federal Government’s position that transgender students have the right to unrestricted use of locker rooms at school. It should be noted that while this is the OCR’s position, it is not settled law. Some federal courts have interpreted the law differently. In addition, it is our understanding that OCR may issue a “Dear Colleague” letter on transgender issues in the near future. School administrators need to stay abreast to the issue of transgender rights, including how federal agencies like OCR are interpreting federal law and how courts have applied this law in practice. We strongly advise school leaders to work with legal counsel to develop compliance strategies that meet legal requirements and the needs of your community. The school attorneys at Frost Brown Todd can help. For more information, please contact [Alexander Ewing](#), [Joe Scholler](#), or any other attorney in the firm’s [Government Services Practice Group](#).

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