Sixth Circuit Refuses to Overrule Injunction Requiring School to Allow Transgender Student to use Restroom Based on Gender Identity

Dec 16, 2016

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Publications

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In September, the United States District Court for the Southern District of Ohio issued a preliminary injunction ordering Highland Local School District to treat a transgender student as a girl and to let her use the girls' restroom at her elementary school. The school appealed the decision, and asked the Sixth Circuit to stay the preliminary injunction. If the Sixth Circuit were to stay the injunction, the school would then be able to require the student to use the bathroom that matches her gender at birth during the appeal process.

Yesterday, the Sixth Circuit Court of Appeals denied the school district's request, despite the Supreme Court of the United States' recent ruling in *Grimm v. Gloucester County School Board*, which granted another school district's request to allow it to treat a student based on their gender at birth. The Sixth Circuit explained that, due to the student's personal circumstances—including her age, mental health history, and unique vulnerabilities—as well as her recent use of the girls' restroom, her case is different than the student in the *Gloucester* case.

The Sixth Circuit held that Highland failed to show it would likely succeed in its appeal, because gender nonconformity (including transgender status) is illegal discrimination. The Court also stated that the school district failed to show the injunction would cause irreparable harm, which is another factor analyzed when ruling on preliminary injunctions. Finally, the Court ruled that the injunction protects the student's constitutional and civil rights, and thus there is a public interest in denying the school's request.

In a dissenting opinion, Judge Sutton opined that the Sixth Circuit should follow the Supreme Court's lead in *Gloucester* and rule in favor of the school district. Judge Sutton stated that the Supreme

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Court's *Gloucester* ruling should provide enough proof that the school district will succeed on the merits that the injunction should be stayed, and that the factual differences between the cases should not result in a different decision.

The Highland decision was very fact-specific, and only applies to the parties in that case. The Supreme Court of the United States granted certiorari in *Gloucester*, and its ruling will ultimately determine transgender student rights in schools. Until then, we recommend school districts consult with their attorneys regarding transgender student issues.

If you have questions or need additional information, please contact Don Crain, Alex Ewing, Jack Hemenway or Joe Scholler in Frost Brown Todd's Government Services Practice Group.

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