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Supreme Court Sends Transgender Bathroom Case Back to Court of Appeals

As we anticipated in our recent client advisory, today the Supreme Court of the United States sent *Grimm v. Gloucester County School Board* back to the Court of Appeals to determine transgender student rights in schools. It is very likely that the Supreme Court will not hear the case this term.

As a result, we recommend schools look to local binding precedent for direction on these difficult issues. The Sixth Circuit (which binds Ohio) recently ruled in favor of a transgender student in a preliminary injunction ruling regarding the student's right to use a bathroom based on their gender identity in [Highland Local School District](#). In that ruling, the Sixth Circuit stated that sex stereotyping based on gender nonconformity—which includes transgender status—is impermissible discrimination. However, this was merely a preliminary injunction ruling, and the Sixth Circuit has not yet ruled on the merits of the case. The Sixth Circuit was awaiting the Supreme Court's decision in *Grimm* to provide binding guidance to resolve *Highland*, but because the Supreme Court will not hear *Grimm* this term, the Sixth Circuit will likely have to rule on the merits of the *Highland* case. Until we receive further clarity, schools are advised to consult their attorneys regarding transgender student issues.

For more 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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