

Supreme Court Decision Prohibiting LGBTQ Discrimination in Employment Could Have Important Implications for Schools

Jun 19, 2020

Categories:

Publications

Authors:

W. Joseph Scholler

Alexander L. Ewing

Recently, the Supreme Court in *Bostock v. Clayton* held that discrimination in employment based on an employee's sexual orientation or transgender status is prohibited sex discrimination under Title VII. This decision has important impacts on schools as employers.

Crucial to the court's decision was the meaning of the statute's language at the time it was adopted. The court assumed that the term 'sex' in Title VII means biological sex or the physical traits of being male or female. After interpreting the statute's language, the court stated that it is a violation of Title VII when "an employer…intentionally treats a person worse because of sex." Applying this interpretation to discrimination based on an individual's sexual orientation or transgender status, the court held that, because an individual's sexual orientation or transgender status is dependent on that individual's sex, these forms of discrimination constitute intentional discrimination in part because of sex and therefore violate Title VII.

Like other employers, schools that discriminate against an employee because of their sexual orientation or transgender status violate Title VII. One important thing to note, however, is that the court's decision reserved the question of how its interpretation of Title VII acts with legal protections of religious liberties. How courts navigate this interaction will have significant implications for religious schools.

Beyond the employment context, the court's decision interpreting Title VII will also likely impact the legal obligations of schools under Title IX. Where Title VII prohibits employment discrimination because of an individual's sex, Title IX prohibits discrimination against any person on the basis of sex by a school receiving federal

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

funds. These provisions use different statutory language, but courts have drawn on interpretations of Title VII to understand the requirements of Title IX. In addition, the Supreme Court has treated the phrases "because of sex" and "on the basis of sex" similarly. For these reasons, courts may begin interpreting Title IX to prohibit discrimination based on sexual orientation and transgender status. This would in effect judicially re-institute Obama-era guidance that was rescinded by the Trump administration, which interpreted Title IX to prohibit discrimination based on biological sex and gender identity.

If courts interpret Title IX in the same way as the Supreme Court has interpreted Title VII, any school policy or practice that treats students differently because of their sexual orientation or their transgender status would violate Title IX. Importantly, Title IX does contain exceptions to this general rule that are absent from Title VII. This understanding of Title IX would directly contradict the emerging understanding of Title IX as currently enforced by the Office for Civil Rights (OCR) under the Trump administration. In a recent enforcement letter to Connecticut's statewide high school athletics association, OCR found a Title IX violation where the association's policy allowed transgender girls (biological males who identify and present themselves as female) to compete against biological females in track events. OCR's conclusion rested on a definition of 'sex' as meaning exclusively biological sex and on a group-based approach to interpreting Title IX. OCR determined that, because biological girls were required to compete against biological boys, but biological boys were not forced to compete against biological girls, this violated Title IX.

However, OCR's interpretation of Title IX appears to conflict with the Bostock decision. The court rejected the argument that the proper comparator for determining whether an employer is discriminating based on sex is how it treats members of the opposite sex. Because of this, and because of the way the court understood discrimination based on transgender status to be intentional discrimination based on biological sex, it is not clear that a court would come to the same conclusion as OCR regarding Connecticut's policy. Indeed, if Bostock's rationale was applied to Title IX, it could be a violation of Title IX to prohibit a transgender student from competing in events

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

that corresponded with the sex with which they identify. Applying Bostock's rational to Title IX would additionally impact other important legal questions under Title IX, including which restrooms transgender students may be allowed to use. This is the pending question in *G.G. v. Gloucester County School Board*, a Fourth Circuit case that will likely be one of the first cases interpreting Title IX following the court's decision in Bostock.

While we are closely watching the continued evolution of the law in this area, school leaders should take this opportunity to proactively review their existing policies and practices surrounding employment discrimination and transgender students to ensure that they comply with state and federal law.

For more information, please contact Joe Scholler, Alex Ewing, Dr. Christopher Thomas, or any member of Frost Brown Todd's Government Services practice group.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons