



## Federal Court of Appeals Allows Transgender Student's Title IX Claim to Move Forward, Defers to DOE's Interpretation of Title IX Regulations

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Last week, the Fourth Circuit Court of Appeals overturned a lower court's decision dismissing a transgender student's Title IX discrimination claim against his school district. Notably, the Fourth Circuit deferred to the Department of Education's interpretation of the Title IX regulations in making its decision. Because the Fourth Circuit is the highest court to have issued a decision concerning Title IX and transgender or gender nonconforming students, the decision will likely influence how lower courts across the country decide similar issues.

In *G.G. v. Gloucester County School Board*, the school district had adopted a policy stating that the use of boys' and girls' restrooms and locker rooms "shall be limited to the corresponding biological genders, and students with sincere gender identity issues shall be provided an alternative facility." The student (a transgender boy) and his parent filed a discrimination complaint in district court under Title IX, requesting a declaration that the district's policy violates Title IX and a preliminary and permanent injunction requiring the district to allow the student to use the facilities consistent with his gender identity.

The district court granted the school district's motion to dismiss the Title IX claim and denied the student's motion for a preliminary injunction. The court declined to adhere to guidance documents issued by the Department of Education, the Office for Civil Rights, and the Department of Justice, which state prohibiting a student from accessing the restrooms that match his or her gender identity violates Title IX. The court found that the Department of Education regulations unambiguously permit school districts to provide separate restroom and locker room facilities on the basis of sex. The court stated, "Despite [those regulations] the Government urges the Court to defer to the Department of Education's interpretation of Title IX, which maintains that a policy that segregates bathrooms based on biological sex and without regard for students' gender identities violates Title IX...To defer to the Department of Education's new-found interpretation would be nothing less than to allow the Department of Education to create *de facto* a new regulation through the use of a mere letter and guidance document."

The Fourth Circuit Court of Appeals disagreed. It found the phrase "on the basis of sex" in the regulations to be ambiguous. Therefore, it concluded that U.S. Supreme Court precedent required deference to the Department of Education's interpretation of its own regulations, regardless of the fact that the Department of Education's policy may change with subsequent administrations. The court reversed the lower

court's dismissal of the Title IX Claim, vacated the denial of the injunction, and sent the case back to the lower court. It is important to note that the Fourth Circuit did not decide whether the school district's policy in this case violated Title IX. The district court will decide that issue, but the Fourth Circuit's deference to federal agency guidance will likely influence the lower court's decision.

School districts are advised to review whether and how current board policies apply to gender nonconforming students. Given this new case and the Fourth Circuit's approval of the Department of Education's interpretation of Title IX, it may be appropriate to update or develop procedures to address issues relating to gender identity and gender nonconforming students. If you have questions about this legal update, or if you would like assistance with drafting procedures concerning gender nonconforming students, please contact Alana Leffler at [aleffler@buelowvetter.com](mailto:aleffler@buelowvetter.com) or 262-364-0267 or your Buelow Vetter attorney.

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