

# Federal Appeals Court in Ohio Continues to Find in Favor of Transgender Individuals, Suggesting Students in School Are the Next to Win Accommodations

A case currently pending before the US Court of Appeals for the Sixth Circuit asks whether a school district can prohibit a transgender student from accessing the bathroom that corresponds to her gender identity. On March 7, 2018, the Sixth Circuit hinted at how it might answer that question when it held that discrimination against an employee for her transgender status or transitioning identity would constitute discrimination on the basis of sex in violation of Title VII.

In the employment case, a male-to-female transgender employee worked at a funeral home for nearly six years while presenting as a man. When she gave the funeral home owner a letter explaining that she had struggled with her gender identity for her entire life and had decided to live and work full time as a woman, the owner fired her because “[h]e wanted to dress as a woman.”

The terminated employee filed a sex-discrimination charge with the EEOC, which in turn filed a complaint against the funeral home in federal court. The trial court decided transgender status is not protected under Title VII, but the Sixth Circuit disagreed.

The Sixth Circuit’s conclusion rested on two theories: (1) that “it is analytically impossible to fire an employee based on that employee’s status as a transgender person without being motivated, at least in part, by the employee’s sex”; and (2) that “discrimination against transgender persons necessarily implicates Title VII’s proscriptions against sex stereotyping.”

That holding and logic suggest that in the pending case involving schools, the Sixth Circuit may similarly hold that a school district would violate Title IX if it prohibited a transgender student from using the restroom that corresponds to her gender identity. Earlier in that case, a federal court in Ohio issued an order that the school district had to treat the transgender girl as a female and permit her to use the girls’ restroom while the case is pending. Most recently, in December 2016, the Sixth Circuit upheld that decision, requiring the school to accommodate the student while the case proceeds because the Sixth Circuit felt it is unlikely the school will succeed in the case.

## What Does This Mean for You?

School districts should continue to follow the advice we have provided in light of clear and consistent direction from federal courts in Ohio, which is:

- Each school district should treat each student in accordance with the gender with which the student identifies. This means that districts should:
  - Continue to accommodate their transgender students by treating them as members of the genders with which they identify
  - Ensure that policies are in place that allow students to use the restrooms and locker rooms that match their gender identities
  - Ensure that policies are in place that allow students to select rooms in overnight trips based on the genders with which they identify
  - Allow students to dress as the genders with which they identify
- Each school district should distinguish between its official student records and its day-to-day references to students to comply both with its statutory mandate to maintain true and accurate student records and with its non-discrimination obligations.
  - Official records should use a student’s legal sex, legal name and appropriate corresponding pronouns
  - School districts should ensure that teachers, staff and classmates refer to each student by the student’s chosen name, gender and pronouns
  - A student’s school ID should reflect the student’s preferred name and gender

This is a fast-evolving area of law and school districts are on the front lines as courts review these issues. If you have questions or concerns, reach out to your legal team for further guidance and assistance.

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