

Transgender Student Developments

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The legal landscape regarding transgender student rights in public schools continues to evolve. Within the last week, several developments have occurred:

- On February 22, 2017, the U.S. Departments of Education and Justice rescinded their previous joint guidance issued under the Obama administration that extended Title IX protections from sex discrimination to include gender identity.
- The issue of whether Title IX extends to gender identity is the subject matter of a case pending before the United States Supreme Court in Gloucester County School Board v. GG, an appeal of a Fourth Circuit court opinion holding that a school district policy mandating students to use restrooms corresponding with their biological sex violated Title IX. Oral argument before the Supreme Court is scheduled for March 28. In consideration that the current administration's position is contrary to that advocated by the prior administration, the Court has requested that the parties "submit their views on how this case should proceed" by March 1.
- On February 27, 2017, in the case of *Evancho vs. Pine-Richland School District*, the United States District Court for the Western District of Pennsylvania preliminarily enjoined the Pine-Richland School District from enforcing a resolution adopted in September 2016 that required students to only use restroom facilities corresponding with their biological sex or unisex (single-user) facilities. The court concluded that the students were unlikely to prevail on the theory that Title IX's protection from sex discrimination extended to gender identity. However, the court found that the students were likely to prevail on their argument that the school district's policy violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The court opined that the availability of single-user, gender-neutral restroom facilities does not negate this violation.

Pending settlement of the law in this area, school districts are best advised to work with individual transgender students and their families to attempt to accommodate their specific needs and concerns to the extent practicable.

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