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Transgender Student Rights Recognized by U.S. Court of Appeals

As we have previously reported, the rights of transgender students have been unsettled. A recent Federal decision may clarify this issue for Illinois students. On May 30, 2017, the Seventh Circuit Court of Appeals ruled that a 17-year old transgender boy in Kenosha, Wisconsin, must be allowed to use the boys' bathroom despite the school's claim that his presence there would invade the privacy rights of his male classmates. The Seventh Circuit's ruling is binding on federal courts in Illinois.

The facts of the case are rather straightforward. The student (whose biological sex was female) had been using the boys' bathroom during his high school career. The School District then decided that the student could only use the girls' restrooms or a gender-neutral restroom that was in the school's main office, which was quite a distance from his classrooms. The

student sought an injunction on the grounds that the School District's policy would cause him irreparable harm, there was no adequate remedy at law, and that he was likely to succeed on the merits of his case.

This is an important case because of the Court's determination that the student was likely to succeed on the merits of his case. The Fourth Circuit Court of Appeals had ruled that schools must allow students to use the restrooms matching their gender identities. But that ruling, involving a Virginia student, was vacated by the U.S. Supreme Court after the Trump administration canceled the Obama administration's legal guidance on transgender bathroom protections in public schools.

In this matter, however, the Seventh Circuit determined that the statutory language of Title IX of the Civil Rights Act – even absent the Obama administration guidance – protects transgender students. The Seventh Circuit opted to take an expansive view of other courts' decisions which protected transgender people under Title VII of the Civil Rights Act and concluded that the rationale underlying those decisions applied to this case.

The Court also rejected the School District's argument that the

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privacy rights of the other students in the district outweighed the student's right to use the boys' bathroom. The Court pointed to the fact that no other student had complained about the student's use of the boys' bathroom and, importantly, as a transgender boy, the student used the bathroom by entering a stall and closing the door. The Court declared that "[a] transgender student's presence in the restroom provides no more of a risk to other students' privacy rights than the presence of an overly curious student of the same biological sex who decides to sneak glances at his or her classmates performing their bodily functions."

The Seventh Circuit's ruling appears to protect the rights of Illinois' transgender students more than any other decision or regulation to date. Still, since the facts of each case may be unique, we encourage you to contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766) if you have any questions regarding this topic or you are presented with a similar issue in your district.