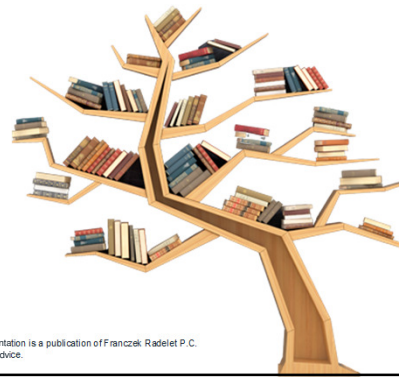


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Unpacking the Latest Transgender Developments

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Litigation Impact on Illinois Schools

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IMPACTS:

- Locker rooms
- Bathrooms
- Overnight accommodations

DOES NOT IMPACT:

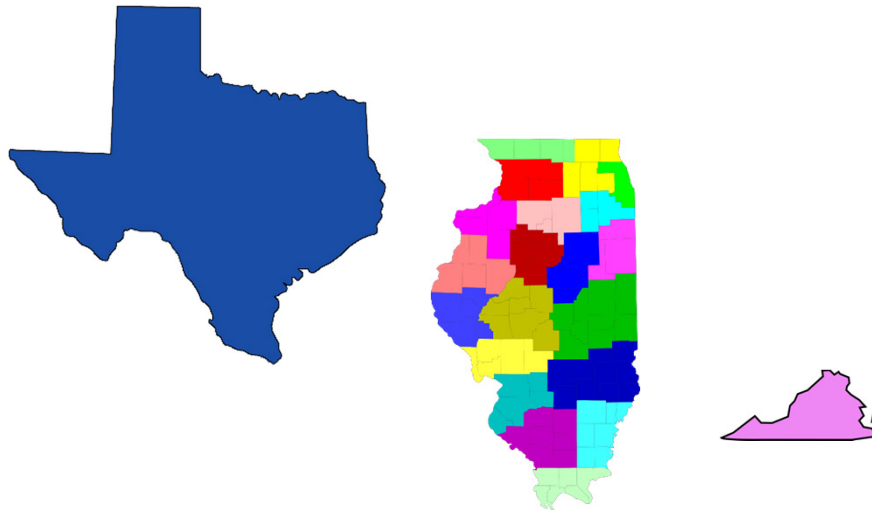
- Name changes
- Bullying/harassment obligations
- Dress code accommodations

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What litigation matters to Illinois?

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- OCR Enforcement Position since 2013
- Non-Public Guidance in 2015
- May 13, 2016 Dear Colleague Letter
- Impact of 2016 Election



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U.S. Department of Education

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- May 13, 2016 guidance from the U.S. Department of Education:
 - *“The Departments treat a student’s gender identity as the student’s sex...”*
 - *“A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.”*

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Texas v. U.S.

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- 12 states challenged DOE 2016 guidance
 - Texas, Alabama, Georgia, Louisiana, Oklahoma, Tennessee, Utah, West Virginia, Wisconsin
- Sought to enjoin DOE’s interpretation that “sex” includes “gender identity” under Title IX



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Texas v. U.S.

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- Nationwide Injunction:
 - No enforcement of DOE 2016 guidance while the case is being decided
 - Prohibition on investigating school districts based on an interpretation of sex that includes gender identity
- OCR acknowledgement of stay
- DOJ filed notice of appeal



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District Court:
Sex ≠ Gender
Identity

Appellate
Court:
Sex = Gender
Identity

U.S. Supreme
Court ?



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- Bigger Picture: Will the courts defer to the Department of Education?



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District 211 Litigation

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- **Transgender Student**
 - Preferred name and pronouns
 - Student records
 - Accommodated schedule
 - Sports participation
 - Bathroom of identified gender

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District 211 Litigation

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- **Locker Room Access**
 - ACLU filed complaint on behalf of student
 - 2 year OCR investigation
 - Issue of restricted v. unrestricted access
 - Enforcement letter and threatened loss of funds
- **Resolution Agreement**
 - Restricted access based on representation will change in private

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Parents for Privacy v. District 211

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- Claims by Non-Transgender Students
 - Hostile environment based on sex
 - Non-comparable facilities
 - Invasion of privacy
- Magistrate Judge recommended denial of Plaintiffs' request for injunction denying bathroom and locker room access



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IDHR Litigation

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- Parents filed an IDHR complaint
 - First grade student
 - Social transition
 - In-class single-user bathroom
 - Limited dispute to communal bathroom used during specials
 - 3 months after transition, school installed privacy barriers and granted access



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IDHR Litigation

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- TRO request denied by state court
- IDHR finds substantial evidence
- Now pending before Illinois Human Rights Commission



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Other Cases To Watch

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Lessons Learned from Litigation

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- Issue with significant learning curve
- Litigation may not be avoidable
- Board involvement is key
- Importance of Public Relations



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Q & A

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The graphic features a white background with a vertical bar on the left side containing colored segments: green, yellow, dark blue, light blue, and red. In the center, the letters 'Q & A' are displayed in a large, blue, sans-serif font with a reflection effect below them. The text 'FRANCZEKRADELET ATTORNEYS & COUNSELORS' is positioned in the bottom right corner. A small box in the top right corner contains the number '19', and the website 'www.franczek.com' is located in the top right corner of the main content area.