

**ILLINOIS COUNCIL OF SCHOOL ATTORNEYS
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**EDUCATING AND ACCOMMODATING
TRANSGENDER STUDENTS**

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Terminology

- Gender expression
 - How a person communicates gender identity, including through voice and choice of clothing, hairstyle, or grooming.
- Gender identity
 - A person's identification as male or female, which may or may not correspond to the person's physical characteristics or sex assigned at birth.
- Intersexed
 - Born with sex chromosomes, external genitalia or an internal reproduction system that is not considered "standard" for either male or female.
- Sexual orientation
 - Refers to an individual's physical and/or emotional attraction to individuals of the same and/or opposite sex.
- Transgender
 - Refers to a person whose gender identity or gender presentation falls outside of stereotypical gender norms.

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Laws Prohibiting Discrimination Against Transgendered Students

Federal Laws

- Fourteenth Amendment
 - All students, including transgender students, are guaranteed equal protection of the law under the Fourteenth Amendment and the right to free speech and association under the First Amendment applicable to states through the Fourteenth Amendment.
 - See *Nabozny v. Podlesny*, 92 F. 3d 446 (7th Cir. 1996).

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Laws Prohibiting Discrimination Against Transgendered Students

Federal Laws

- Title IX
 - Provides that no person shall, on the basis of gender, be excluded from participation in, denied the benefits of, or subjected to discrimination under any education program or activity receiving federal financial assistance.
- Equal Access Act
 - Requires any public secondary school that receives federal money and has a “limited open forum” to provide LGBT-oriented clubs formed by students the same access to school facilities that other student groups enjoy.

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Laws Prohibiting Discrimination Against Transgendered Students

State Laws

- Illinois Human Rights Act
 - Prohibits schools from discriminating against students on the basis of gender identity or sexual orientation.
 - Sexual orientation defined as actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity whether or not traditionally associated with the person's designated sex at birth.

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Laws Prohibiting Discrimination Against Transgendered Students

State Laws

- ISBE Regulations
 - All students within a school district must be provided equal opportunities in all education programs and services provided by the system.
 - No school system may exclude or segregate any pupil, or discriminate against any pupil on the basis of sex, sexual orientation or gender identity.
- Bullying Prevention Statute
 - Prohibits bullying on the basis of sex, sexual orientation, gender-related identity or expression and association with a person or group with one or more of these characteristics, whether actual or perceived.

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Court And Agency Decisions

Dress Codes

- *McMillen v. Itawamba County Sch. Dist.*, 702 F.Supp.2d 699 (N.D. Miss. 2010)
 - District violated lesbian student's First Amendment right of free expression when it refused to let her attend prom wearing a tuxedo and bringing a same-sex date.

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Court And Agency Decisions

Dress Codes

- *Doe v. Yunits*, 2000 WL 33162199 (Mass. Super. Ct. 2000)
 - Male junior high school student with female gender identity began wearing girls' make-up, shirts and fashion accessories to school.
 - District's dress code prohibited clothing which could be disruptive to the educational process, or affect students' safety. School told student she would not be allowed to enroll if she wore girls' clothing to school.

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Court And Agency Decisions

Dress Codes

- *Doe v. Yunits*, 2000 WL 33162199 (Mass. Super. Ct. 2000) (Ct'd.)
 - Court awarded student injunctive relief, finding that she was likely to establish that by dressing in clothing and accessories traditionally associated with female gender, she was engaging in protected speech.
 - Also, school officials did not discipline biological females who wore the same types of clothing to school.

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Court And Agency Decisions

Restroom and Locker Room Issues

- *Doe v. Regional School Unit 26*, 86 A.3d 600, 2014 ME 11 (Sup. Jud. Ct. Me. 2014)
 - Parents of “Susan”, a transgender child born male, sued under Maine Human Rights Act for unlawful discrimination in education and in a place of public accommodation, after school excluded Susan from the girls’ restroom when she entered 5th grade.
 - Lower court judge granted summary judgment to district, agreeing that the “segregated-by-sex” requirement for school bathrooms in the “Health Nutrition, and Safety” law supported district’s action.

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Court And Agency Decisions

Restroom and Locker Room Issues

- *Doe v. Regional School Unit 26*, 86 A.3d 600, 2014 ME 11 (Sup. Jud. Ct. Me. 2014) (Ct'd.)
 - Maine Supreme Judicial Court reversed: Health statute, which predated inclusion of sexual orientation in the MHRA by 20 years, did not define “sex” -- and its purpose was to establish the layout of school bathrooms, not mandate how schools prescribe and monitor bathrooms’ use.
 - In finding that school violated MHRA’s prohibition of discrimination based on sexual orientation, court relied heavily on Susan’s psychological and educational needs as determined by her doctors, family, and – originally – by the school itself.

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Court And Agency Decisions

Restroom and Locker Room Issues

- 2013 Colorado Civil Rights Division Case – Coy M.
 - Parents of kindergarten student Coy M. informed school that their child identified as and should be treated as a girl. School initially agreed but a few months into child’s first grade year, barred her from using girls’ bathroom, telling her parents that Coy’s presence there would discomfit some students and parents. Thereafter, school required the student to use staff bathrooms or gender-neutral restroom in school’s health office.

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Court And Agency Decisions

Restroom and Locker Room Issues

- 2013 Colorado Case – Coy M. (Ct'd.)
 - Colorado Civil Rights Division ruled that school discriminated against Coy when it refused to let her use the girls' bathroom, needlessly creating a situation in which she was subject to harassment, when it barred her from girls' bathroom even though she clearly identified as female.
 - To tell the student that she must disregard her identity "while performing one of the most essential human functions" constituted "severe and pervasive treatment and created an environment that was objectively and subjectively hostile, intimidating or offensive."

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Court And Agency Decisions

Restroom and Locker Room Issues

- 2013 Colorado Case – Coy M. (Ct'd.)
 - Although the student's birth certificate stated she was male, more recent medical and legal documents identified her as a female. The Division found it clear that Coy had completely integrated into society as a female.
 - The Division's determination letter concluded that the district's grounds for denying Coy access to the girls' bathroom were not credible and a pretext for denying Coy equal protection.

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Court And Agency Decisions

Restroom and Locker Room Issues

- 2013 OCR Case
 - Arcadia Unified School District in California entered into a Resolution Agreement with U.S. Department of Education Office for Civil Rights and Department of Justice, Civil Rights Division, concerning allegations of discrimination against a transgender student. The female student, who identified as a boy from a young age, attended Arcadia since kindergarten and was entering 9th grade at the time of the Agreement.

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Court And Agency Decisions

Restroom and Locker Room Issues

- 2013 OCR Case (Continued)
 - Student began to transition to living as a male during 5th grade.
 - Parents, his teacher, and school administrators worked together to ensure a smooth transition. According to district and student's family, when notified by the teacher of student's transition, his classmates accepted him as male immediately and treated him as a boy. For the rest of that school year, with parents' consent, he used a gender-neutral restroom.

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Court And Agency Decisions

Restroom and Locker Room Issues

- 2013 OCR Case (Ct'd.)
 - When student began 6th grade, parents asked that he be permitted to use male-designated restrooms and locker rooms. Student's health care providers informed district that the medically appropriate practice is to support a young person during social transition to his or her self-identified gender. Therefore, schools should treat the transgender student as the gender consistent with his or her gender identity in all settings, including routine activities and access to sex-specific facilities.

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Court And Agency Decisions

Restroom and Locker Room Issues

- 2013 OCR Case (Ct'd.)
 - District refused. Citing generalized concerns about safety and privacy, it instead required student to use private restroom in school health office as both a restroom and changing area for P.E. class.
 - The distance between the health office and gym and student's classrooms, along with other logistics related to complying with this requirement, led to embarrassing questions and encounters. Student eventually avoided using the restroom altogether.

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Court And Agency Decisions

Restroom and Locker Room Issues

- 2013 OCR Case (Ct'd.)
 - Refusal of access to boys' restrooms was followed by an October 2011 incident in which district conditioned student's participation in an overnight academic camping trip on staying in a private cabin by himself, separate from all of his classmates (including male friends aware of his transgender status who had requested him as a cabin mate).
 - At that point, his parents filed a discrimination complaint with OCR and DOJ.

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Court And Agency Decisions

Restroom and Locker Room Issues

- 2013 OCR Case (Ct'd.)
 - February 2012: student obtained a revised birth certificate identifying his sex as male. School then began allowing him to use boys' bathroom and to treat him in all respects as male.
 - District voluntarily entered into a Resolution Agreement to:
 - Work with a consultant to create a safe non-discriminatory learning environment for students who don't conform to gender stereotypes;
 - Amend its policies to designate gender identity as a category of discrimination; and
 - Provide annual training on preventing gender-based discrimination.

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Court And Agency Decisions Restroom and Locker Room Issues

- 2013 OCR Case (Ct'd.)
 - The Arcadia District Resolution Agreement provisions on restroom usage specifically apply only to this student.
 - The Agreement does not require the district to adopt this change system-wide, and future decisions will be made on a case-by-case basis.

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Recommended Steps and Strategies for School Districts

- Educate staff about bullying and transgender issues
- Investigate and respond promptly to complaints
- Consider other district-wide supports and strategies
- Communicate with community stakeholders

QUESTIONS?

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