

***School Law FYI***

Seventh Circuit Upholds Transgender Students' Right to Use Bathroom and Locker Rooms Consistent with Gender Identity

SARAH GHAZI-MORADI, BRIAN P. GOODMAN | 01.30.24

In August 2023, in *A.C. v. Metro. Sch. Dist. Of Martinsville*, the Seventh Circuit Court of Appeals, the federal court of appeals governing Wisconsin, affirmed and expanded on its 2017 decision in *Whitaker v. Kenosha Unified School District*. Three transgender male students sought injunctions to require their school districts in Indiana to permit them to use the boys' restrooms and locker rooms consistent with their gender identity. The court affirmed that the students were likely to succeed on the merits of their claims against the districts because the districts' refusals constituted discrimination on the basis of sex.

Background

This case combined claims brought by three different transgender students in two different districts. A.C. was a seventh-grade student who attended school in the Metropolitan School District of Martinsville, Indiana. At the beginning of the school year, A.C.'s stepfather requested that the school grant A.C. access to the boy's bathroom. The school refused and stated that A.C. should either use the girls' bathroom or a unisex bathroom in the health office. However, A.C.'s healthcare providers stated that using the girls' bathroom would exacerbate his gender dysphoria and expose his transgender identity to his classmates. Additionally, the unisex bathroom in the health clinic was far away from A.C.'s classes, and he would also have to ask for permission and sign into the health office to use this bathroom.

A.C. used the boys' bathroom in defiance of the school's directive. A.C.'s disposition improved, he felt more comfortable in school, and none of his peers raised any issues or questioned A.C.'s presence. However, a staff member reported A.C. and the school responded by threatening to discipline A.C. if he continued to use the boys' bathroom. A.C. felt isolated and punished by the school's decision, which ultimately impacted his academic performance.

B.E. and S.E. were fifteen-year-old twin boys who attended Terre Haute North Vigo High School. The twins used the boys' bathroom at North Vigo at the beginning of the 2021 – 2022 school year, and no students raised any concerns. The district's employees informally reprimanded B.E. and S.E. and told them not to use the boys' bathroom again. The boys also planned to use the stalls in the locker room to change in privacy and did not seek access to the locker room showers. The school denied this request and instructed them to use either the unisex bathroom in the health clinic or the girls' bathrooms and locker rooms.

INJUNCTIONS

The three students filed for injunctions against their respective school districts. In separate decisions, the district court granted the students' injunctions ordering the districts to provide the students with access to the boys' restrooms and locker rooms, as requested. This decision was based on the likelihood that the students would prevail on their claims under Title IX and the Equal Protection Clause of the Fourteenth Amendment to the Constitution. Both school districts appealed these injunctions.

SEVENTH CIRCUIT APPEAL

The Seventh Circuit Court of Appeals ruled that the legal questions raised by the appeal were largely guided by the court's previous decision in *Whitaker*. The court reasoned that discrimination on the basis of transgender status is sex discrimination. The court also determined that the plaintiffs were suffering negative consequences (lack of equal access to school programs) that justified granting the injunctions against the districts.

In the decision, the court also suggested that the U.S. Supreme Court should weigh in on this issue. Subsequently, one of the school districts involved in this case requested that the U.S. Supreme Court hear an appeal of this decision. However, the U.S. Supreme Court denied that request on January 16, 2024, and will not hear an appeal at this time. Therefore, the recent decision from the

Seventh Circuit Court of Appeals remains the clearest legal authority for Wisconsin schools.

How Districts Should Proceed

This case provides strong guidance to Wisconsin school districts that failing to provide transgender students with access to the bathrooms and locker rooms consistent with their gender identity could result in discrimination claims.

Districts faced with such a request should work closely with the student and the student's family to discuss the request, along with other relevant questions (such as requests for the use of certain names and pronouns consistent with a student's gender identity).

School districts that receive concerns regarding these arrangements from students who are not transgender should consider offering alternative arrangements that provide additional privacy to these students who express concerns. Such an approach assists the students who raised privacy concerns while still complying with the law by permitting transgender students to use the bathroom and locker room consistent with their gender identity.

This is a rapidly changing area of the law. Don't hesitate to reach out to a member of the Boardman Clark [School Law Practice Group](#) for legal advice on LGBTQ+ student issues.

DISCLAIMER: Boardman & Clark LLP provides this material as information about legal issues and not to give legal advice. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Boardman & Clark LLP recommends the use of legal counsel on specific matters.

Primary Authors



**Sarah Ghazi-
Moradi**
(608) 286-7165



Brian P. Goodman
(608) 283-1722

School Law Practice Group Members

Sarah Ghazi-Moradi
(608) 286-7165

Douglas E. Witte
(608) 283-7529

Jennifer S. Mirus
(608) 283-1799

Sherrice Perry
(608) 286-7242

Brian P. Goodman
(608) 283-1722

Steve Zach
(608) 283-1736

Rhonda R. Hazen
(608) 283-1724

Daniel T. Fahey
(608) 286-7216

William L. Fahey
(608) 286-7234

Rick Verstegen
(608) 286-7233

Matthew W. Bell
(608) 286-7239

Eric B. Hagen
(608) 286-7225

Eileen A. Brownlee
(608) 822-3251

David P. Weller
(608) 286-7235

**Christopher T.
Schmidt**
(608) 286-7157