

There have been three (3) recent events impacting the public debate regarding transgender students and their use of school facilities.

First, on February 22, 2017, the Trump administration reversed course on the Title IX guidance documents previously issued by the Department of Justice and the Department of Education under the prior administration. While the new Dear Colleague letter cites a need for local school districts and states to take the primary lead in decisions regarding education policy, the letter only addresses the new administration's shift in terms of enforcement of Title IX only. This is separate and distinct from what the courts may do on these issues.

Second, on February 27, 2017, the United States District Court for the Western District of Pennsylvania issued its decision in the Evancho v. Pine-Richland School District case (Docket No. 2:16-01537). This case, within the context of a preliminary injunction, granted the preliminary injunction against the Pine-Richland School District on the basis of the Equal Protection Clause claim filed in that case. While the court considered the newly issued Title IX guidance from the Trump administration, the decision focused on the Equal Protection Clause claim. This case suggests that even with the newly issued Title IX guidance, claims under the Equal Protection Clause present a viable means to challenge a policy which does not allow a transgender student from using student restrooms which conforms to the student's gender identity.

Third, on March 6, 2017, the United States Supreme Court remanded the G.G. v. Gloucester County School District case back to the Fourth Circuit. The basis for the remand was the newly issued Title IX guidance from the Trump administration. The Fourth Circuit is now tasked with evaluating the case under the newly issued Title IX guidance (as its prior decision focused on the prior administration's Title IX guidance). However, it is important to note that, akin to the Pine-Richland case, there are constitutional law claims, in addition to the statutory Title IX claim, that will now be in play before the Fourth Circuit.

Bottom line, even though the Trump administration has reversed course on the prior administration's Title IX guidance, the law still remains unsettled on these issues. The Pine-Richland case makes it clear that the courts are going to evaluate constitutional claims in addition to Title IX claims in these cases.

This District's approach to these issues was grounded in the Title IX guidance of the prior administration. Now, even though there has been an administrative shift in terms of Title IX, the courts are starting to tackle the constitutional issues inclusive of Equal Protection Clause implications of school district decision-making across the county.

The law remains unsettled as to whether and under what facts students have legal rights to accommodations. We are closely monitoring the ever changing legal landscape and are in the process of considering the options, as well as the implications of each option, prior to making any changes as to how the District presently approaches these issues. We want to make sure that our next steps are legally sound and are in the best interest of the District and its students.