
The United States Sixth Circuit Court of Appeals Supports a Female Transgender Student's Right to Use the Girl's School Restroom

By Marshall W. Grate / Dec 23, 2016

The majority of a three judge panel of the United States Sixth Circuit Court of Appeals upheld a preliminary injunction that ordered Highland Local School District (Highland) to allow an 11 year old transgender student, who identified as female, to use the girl's restroom. Highland attempted to overturn this injunction pending its appeal of the lower court's decision in favor of the transgender student. *Dodds v. U.S. Dept. of Educ.*, Case No. 16-4117 (6th Cir., December 15, 2016)(recommended for publication).

Even though the United States Supreme Court granted a stay in favor of a school district in a very similar case, *Grim v. Gloucester City School Board*, 136 S. Ct. 2442 (2016), the majority opinion in *Dodds* determined that settled law prohibits discrimination based on transgender status, and Highland was unlikely to prevail on the merits of the case.

The majority opinion concluded that the preliminary injunction factors weighed against Highland's appeal to stay enforcement of the lower court's decision. The majority opinion cited to the student's young age and the fact that she had been using the girl's restroom for over six weeks, even though apparently the student's use of the girl's restroom resulted from Highland's compliance with the District Court's preliminary injunction order. According to the majority opinion, Highland could not demonstrate irreparable harm associated with its compliance with the lower court's injunction. On the other hand, the majority opinion found that the transgender student would experience irreparable harm if she was deprived of restroom facilities consistent with her gender identity. Lastly, the majority opinion concluded that the public interest strongly favored the preliminary injunction order since protection of constitutional and civil rights is always a public interest.

One judge dissented chiefly because the majority showed disdain for the United States Supreme Court's grant of a stay of enforcement in the *Grim* case, which involved very similar factual and legal issues.

This *Dodds* decision is recommended for full text publication and thus will have binding precedential authority unless it is overturned or modified either through an en banc decision by all the judges of the Sixth Circuit Court of Appeals or by the United States Supreme Court. Until the United States Supreme Court issues a final decision in the *Grim* case, the Highland decision demonstrates that the Sixth Circuit will protect transgender student's rights under Title IX as interpreted and applied by the United States Department of Education and Office of Civil Rights.

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