



## U.S. Supreme Court Vacates Lower Court Decision Which Ruled Against High School's Bathroom Policy for Transgender Students

Leslie A. Dickinson and Laura J. Genovich

*Foster Swift School Law News*

March 6, 2017

The United States Supreme Court sent a case involving a Virginia transgender student who sued his high school over restroom access back to the lower appellate court for further consideration. The United States Court of Appeals for the Fourth Circuit determined last April that the transgender student had a valid Title IX claim against his high school because of its bathroom policy which required students to use the bathrooms and locker rooms for their "corresponding biological genders." When siding with the student, the Fourth Circuit held that a provision in Title IX that allows schools to provide "separate toilet, locker rooms and shower facilities on the basis of sex" was ambiguous and, therefore, deferred to the Obama administration's interpretation of Title IX. The Obama Administration had issued guidance that, if a school opts to separate students in restrooms and locker rooms as provided in Title IX, then it "must treat transgender students consistent with their gender identity."

The Trump administration recently withdrew this guidance on the interpretation of Title IX. As a result, the Supreme Court vacated the Fourth Circuit's ruling and instructed it to reconsider the case. The Fourth Circuit will now need to determine, given new executive guidance, whether federal law treats discrimination on the basis of gender identity the same as discrimination on the basis of sex.

The Supreme Court's decision also means that it will not take up the substantive issue of transgender rights in school settings this term.

---

### **AUTHORS/ CONTRIBUTORS**

Leslie A. Abdo

Laura J. Genovich

---

### **PRACTICE AREAS**

Municipal & Public Entity Law

School Law Services

---