

## Free Speech or Misgendering? Sixth Circuit Strikes Down School Pronoun Policy

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November 7, 2025

Can a public school discipline students for using pronouns that reflect a classmate's sex assigned at birth, rather than their gender identity? According to the Sixth Circuit's *en banc* decision issued November 6, 2025, the answer is no—not without violating the First Amendment.

The Court struck down an Ohio school district's policy prohibiting students from using "biological pronouns" when referring to transgender or nonbinary peers. The majority held that such restrictions constitute viewpoint discrimination and compelled speech, running afoul of the First Amendment protection for expression on matters of public concern.

The Court emphasized that while schools may act to prevent harassment or bullying, "they may not skew this debate by forcing one side to change the way it conveys its message or by compelling it to express a different view." The district had introduced no evidence that the use of what the court referred to as "biological pronouns" would materially disrupt school functions or meet the legal definition of harassment.

The case arose after a parent asked administrators whether students could be disciplined for refusing to use a transgender classmate's preferred pronouns. The district claimed "purposefully referring to another student by gendered language contrary to their identity" would be considered discrimination under applicable Board policy. That response prompted *Defending Education*—a national organization representing parents of school-aged children—to sue on behalf of four member families. Their children held religious and scientific beliefs that sex is immutable and wished to use pronouns consistent with sex assigned at birth, and that policies on harassment, bullying, and "discriminatory language" chilled their speech and compelled them to affirm views they rejected.

The district court denied a preliminary injunction, and a Sixth Circuit panel affirmed. But the appellate court granted rehearing by the full court, vacated the panel opinion, and ultimately sided with *Defending Education*, holding that the school's policies likely violated the First Amendment. Mandating preferred pronouns discriminates between competing viewpoints by elevating one belief system (that gender identity determines pronouns) and penalizing the contrary belief (that pronouns should comport with sex assigned at birth).

### Key Takeaways:

- Schools must meet a high bar ("substantial disruption") to restrict student speech—mere offense is not enough. The decision clarifies that emotional distress or disagreement from listeners—without concrete evidence of disruption or hostile conduct—does not justify silencing opposing viewpoints.
- The injunction bars punishing students for ordinary pronoun use, not for conduct that meets the legal threshold for bullying or harassment. Schools retain authority to intervene in targeted, abusive, or repeated conduct.

If you have questions about how this development may impact your organization, please contact your Miller Canfield attorney or one of the authors of this alert.