

Understanding Transgender Protection and the Law

Relevant Federal Law:

Title IX: Prohibits the discrimination on the basis of sex in any federally funded education program or activity. “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title VII of the Civil Rights Act of 1964: Prohibits employment discrimination based on race, color, religion, sex, and national origin.

Relevant Case Law:

Price Waterhouse v. Hopkins (1989)

Ann Hopkins was proposed for partnership in 1982. Out of 88 applicants, she had the best record for creating new business and securing multi-million dollar contracts for the accounting firm. After an evaluation by several male employees, some of which who told her to “walk more femininely, talk more femininely, dress more femininely, wear makeup, have her hair styled, and wear jewelry,” Hopkins was twice denied the promotion. She quit the firm and sued under Title VII and won, creating the Price Waterhouse Theory, which provides that discrimination based on sex can occur when the discrimination is based on gender non-conformity.

Cruzan v. Special School District (2002), 8th Circuit

Cruzan sued the school district because she did not feel it was appropriate to share the women’s bathroom with a transgendered female coworker. Cruzan alleged discrimination based on her sex and religion, and alleged that it made for an abusive and hostile work environment. The court issued a summary judgment against Cruzan, concluding that she did not prove that “she had a bona fide religious belief that conflicted with an employment requirement, she informed the school district of her belief, and she suffered an adverse employment action,” and she failed to establish that she had “a tangible change in duties or working conditions that constitute a material employment disadvantage.” She also failed to establish that the discrimination based on her sex created a hostile work environment, and that the harassment affected a term, condition, or privilege of her employment.

Glenn v. Brumby (2011), 11th Circuit

Glenn worked for the Office of Legislative Council, and transitioned from male to female after she was diagnosed with Gender Identity Disorder. During the transition, Glenn was fired from the OLC by Brumby, who found the transition to be “inappropriate, that it would be disruptive, and that some people would view it as a moral issue, and that it would make Glenn’s coworkers uncomfortable.” Glenn sues, asserting two violations: 1) Equal Protection and Sex Stereotyping and 2) Termination due to a medical condition.

The court found that discriminating against someone on the basis of his or her gender non-conformity constitutes sex-based discrimination under the Equal Protection Clause (but only for government entities).

Wolfe v Fayetteville, Arkansas School District (2011), 8th Circuit

Wolfe filed suit against the school district alleging he was a victim of sexual harassment in violation of Title IX,

20 U.S.C § 1681. Wolfe was a homosexual male frequently bullied at school, allegedly for being gay and overly-feminine. The court found that Wolfe did not fulfill the requirements for proving he was harassed or discriminated against *based on his sex*, or failure to conform with gender stereotypes, and thus, the court found in favor of the school district.

Eure v. Sage Corp (2014), TX District Court

Eure was a transgender male, hired to be an instructor at a truck driving school. One of his managers, Campanian, allegedly made statements against Eure as a transgender person, and stopped putting him on the schedule. After Eure filed complaints with the higher ups, he filed suit against the corporation for discrimination under Title VII of the Civil Rights Act of 1964 and Texas law. The defendant moved for summary judgment, which was granted, because the plaintiff failed to show gender discrimination under Title VII. According to the judge, the courts have not determined that transgender is a protected class, but that does not inherently prevent someone from filing a discrimination case under Title VII. However, under the Price Waterhouse doctrine, the plaintiff must show gender stereotyping based on discrimination based on the perceived non-conformity with gender stereotypes (not acting like a man, etc). Because the plaintiff failed to prove the discrimination on those merits, the complaint was dismissed.

“This is a difficult case because, although Price Waterhouse provides a vehicle for transgender persons to seek recovery under Title VII, neither the Supreme Court nor the Fifth Circuit have held that discrimination based on transgender status is per se gender stereotyping actionable under Title VII. Without any briefing from the parties on the issue, this Court declines to hold otherwise. Because Eure has failed to present evidence showing that the discrimination was motivated by her failure to act as a stereotypical woman would, Eure has not presented a cognizable gender stereotyping claim and cannot succeed in showing that the discrimination or hostile work environment claim that she presents is “because of sex,” as Title VII requires. Therefore, the court GRANTS Defendant’s Motion for Summary Judgment on the discrimination and hostile work environment claims.”

Grimm v. Gloucester County School Board (2015) District Court, Virginia

Grimm is a transgender male, born as a female but presenting as a male. The school let Grimm use the male restrooms without incident for several weeks, but after a new policy implementation, he was told to use the female or gender neutral bathrooms. Grimm sued the school for discrimination under Title IX and Equal Protection under the 14th Amendment. Currently, a judge has dismissed his Title IX claims, but the Equal Protection claims are still scheduled for hearing.

Tooley v. Van Buren Public Schools, et al. (2015)

Tooley is a transgendered boy, born as a female and presenting as a male. Tooley alleges that the defendants in this case denied him equal treatment and benefits under Title IX, as well as Title IV of the Civil Rights Act, and Equal Protection of the Fourteenth Amendment. Tooley was denied the ability to use the men’s restroom at the school, and suffered “severe and pervasive sex-based harassment”. Currently scheduled for a hearing.

Johnston v. University of Pittsburgh (2015), Pennsylvania

Transgender male was using the male locker rooms and bathrooms without issue. After a few months the school directed him to stop. Student continued using the locker rooms and was eventually expelled. Sued for discrimination under Title IX, and judge dismissed the case.

NCAA Policy:

The National Collegiate Athletic Association (NCAA) has a complete policy outlining transgender student-athlete participation in NCAA sports. Colleges not governed by the NCAA may have different policies. School-

specific procedures for working with trans athletes may differ at each institution. Use the links below to find the NCAA policies, as well as specific school listings.

The [National Collegiate Athletic Association](#) (NCAA), which organizes competition in 23 sports at over 1,000 colleges and universities, does not require gender confirming surgery or legal recognition of a player's transitioned sex in order for transgender players to participate on a team which matches their identity. However, things become a bit more complicated when hormones are used. The recommended NCAA policy requires one year of hormone treatment as a condition prior to competing on a female team. Conversely, athletes assigned female at birth remain eligible to compete in women's sports unless or until that athlete begins a physical transition using hormones (testosterone).

NCAA Policy on Transgender Student-Athlete Participation

The following policies clarify participation of transgender student-athletes **undergoing hormonal treatment for gender transition**:

1. A trans male (FTM) student-athlete who has received a medical exception for treatment with testosterone for diagnosed Gender Identity Disorder or gender dysphoria and/or Transsexualism, for purposes of NCAA competition may compete on a men's team, but is no longer eligible to compete on a women's team without changing that team status to a mixed team.
2. A trans female (MTF) student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or Transsexualism, for the purposes of NCAA competition may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.

Any transgender student-athlete who is **not taking hormone treatment** related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.

- A trans male (FTM) student-athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.
- A trans female (MTF) transgender student-athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.

What other states are doing:

Alabama- Gender determined by birth certificate

Alaska- No policy

Arizona- Case-by-case decision

Arkansas- No policy

California- Policy allows transgender students to participate in some circumstances

Colorado- Policy allows transgender students to participate in some circumstances

Connecticut- Law prohibits discrimination based on gender. Policy guidelines exist for locker room use, sports, and gym class assignments, etc

Delaware- No policy

Florida- Law prohibits discrimination based on gender, allowing transgender participation

Georgia- Gender determined by birth certificate

Hawaii- No policy

Idaho- Allows for transgender participation under certain circumstances, such as female-to-male taking

hormones may participate on the boy's team only.

Illinois- Policy allows transgender students to participate in some circumstances

Indiana- No policy

Iowa- Policy allows transgender students to participate in some circumstances, focuses mostly on transgender males

Kansas- Policy allows transgender students to participate in some circumstances

Kentucky- Gender determined by birth certificate

Louisiana- No policy

Maine- Policy allows transgender students to participate in some circumstances

Maryland- Law prohibits discrimination based on gender, protects transgender persons

Massachusetts- Law prohibits discrimination based on gender, protects transgender persons

Michigan- Case-by-case decision

Minnesota- Policy allows transgender students to participate in some circumstances Mississippi- No policy

Missouri- Policy allows transgender students to participate in some circumstances

Montana- No policy

Nebraska- No policy

Nevada- Law prohibits discrimination based on gender

New Hampshire- Gender determined by birth certificate, unless post-surgery

New Jersey- Policy allows transgender students to participate in some circumstances

New Mexico- Gender determined by birth certificate, allow schools to determine the student's sex-assignment

New York- Policy allows transgender students to participate in some circumstances

North Carolina- Gender determined by birth certificate

North Dakota- No Policy

Ohio- Policy allows transgender students to participate in some circumstances

Oklahoma- Policy allows transgender students to participate in some circumstances

Oregon- Policy allows transgender students to participate in some circumstances

Pennsylvania- Policy allows transgender students to participate in some circumstances

Rhode Island- Law prohibits discrimination based on gender, protects transgender persons

South Carolina- No policy

South Dakota- Policy allows transgender students to participate in some circumstances

Tennessee- No policy

Texas- No policy

Utah- No policy

Vermont- Law prohibits discrimination based on gender, protects transgender persons

Virginia- Policy allows transgender students to participate in some circumstances

Washington- Law prohibits discrimination based on gender

Washington, DC- Law prohibits discrimination based on gender

West Virginia- No policy

Wisconsin- Policy allows transgender students to participate in some circumstances

Wyoming- Law prohibits discrimination based on gender