

## Third Circuit Court Upholds Transgender Bathroom Policy

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While the decision was announced several weeks ago, a June 18 court opinion revealed why a judge agreed transgender students may continue to use bathrooms and locker rooms that match their gender identities.

The U.S. Third Circuit Court of Appeals [opinion](#) in *Joel Doe, et al v. Boyertown Area School District, et al*, affirmed the district court's decision finding that Boyertown's policy did not constitute gender discrimination as it is applied equally to all genders. The opinion also found that there is a compelling interest in protecting transgender students from discrimination, that the policy was narrowly tailored to meet the needs of transgender students and that the presence of transgender students in restrooms and locker rooms does not offend the constitutional right to privacy.

Students that identify with their birth sex challenged the school district's policy permitting transgender students to use restrooms and locker rooms designated for the sex with which they identify, claiming the policy violated Title IX, their Fourteenth Amendment right to privacy, their right to access to educational opportunities, programs, and benefits, and their Pennsylvania common law right to privacy.

Judge Theodore McKee noted that "the presence of transgender students in locker and restrooms is no more offensive to constitutional or Pennsylvania law privacy interests than the presence of the other students who are not transgender. Nor does their presence infringe on the plaintiffs' rights under Title IX."

The court noted that exclusion of transgender students from facilities that are consistent with their gender identity can contribute to psychological problems like anxiety and depression, and concluded that the district "adopted a very thoughtful and carefully tailored policy in an attempt to address some very real issues while faithfully discharging its obligation to maintain a safe and respectful environment in which everyone can both learn and thrive."

If you have any additional questions regarding this decision, or if we can provide any assistance as you review your current policies and practices, please do not hesitate to contact any of the attorneys in Barley Snyder's [Education Practice Group](#).