

United States Supreme Court Issues Temporary Stay of Fourth Circuit's Transgender Restroom Decision

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The information contained in this alert has been updated. Please [click here](#) to see the mo

This Client Alert is in follow-up to our [April 22, 2016](#) and [May 13, 2016](#) Legal Updates addressing transgender student issues under Title IX of the Education Amendments Act of 1972 ("Title IX").

On August 3, 2016 the United States Supreme Court, in a 5-3 decision, issued a temporary stay of a lower court ruling that would have allowed a transgender boy to use the high school restroom that corresponds with the gender with which he identifies. The applicability of this order is limited to implementation of the April 19, 2016 decision of the Fourth Circuit Court of Appeals in *G.G., by his next friend and mother, Deirdre Grimm v. Gloucester County School Board*, No. 15-2056 (4th Cir., April 19, 2016). The court in *Gloucester County* held that a public school district's refusal to allow students to use bathrooms corresponding to their gender identity violates Title IX.

On July 13, 2016, the Gloucester County School Board in Virginia filed an emergency petition for "Recall and Stay of the U.S. Fourth Circuit's Mandate Pending Petition for Certiorari." The school board is challenging the Fourth Circuit's decision applying the May 13, 2016 guidance issued by the United States Department of Education (Click [here](#) for more info). The Guidance addresses numerous issues related to transgender student rights under Title IX, including the position that schools are required to permit transgender students to use the restroom that corresponds with their gender identity. The school board has indicated that it intends to file a petition in late August asking the Supreme Court to hear its appeal of the Circuit Court's decision.

While joining the majority in granting the recall and stay, Justice Breyer indicated that he does not support the school board's emergency appeal, but joined the four Justices in granting the order as a "courtesy" to put the issue on hold until the Justices can review the matter when they return in the fall. Justice Breyer noted that in light of the facts that four Justices have voted to grant the application referred to the court by the Chief Justice and that the court is presently on recess, granting temporary stay will "preserve the status quo."

Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan dissented and indicated they would not have put the Fourth Circuit's ruling on hold. As a result of the order, Gloucester County High School will not be required to take any further action until after the Justices have determined whether to grant full review. The court's order has no effect on any other case.

The reduced number of Justices currently on the court impacts this matter. It is possible that if the court takes up the case, there may still be only eight Justices. If review of the case results in a 4-to-4 split, the Fourth Circuit's ruling in favor of G.G. would remain in place. The same would be true if the Court chooses not to grant review. We will continue to monitor developments surrounding this issue and the impact any future decision may have on our school clients.