



United States Department of Education’s Office for Civil Rights Finds Illinois School District Violated Transgender Student’s Rights Under Title IX/Settlement Approved--

In a matter receiving national media attention, the United States Department of Education’s Office for Civil Rights (“OCR”) recently determined that an Illinois school district violated Title IX by excluding a transgender student from “participation in and denying her the benefits of its education program, providing services to her in a different manner, subjecting her to different rules of behavior, and sub-

jecting her to different treatment on the basis of sex.” Specifically, the district denied the student access to the locker room of her gender identification.

In December 2013, the student filed a complaint alleging that the Township High School District 211 denied her access to the girls’ locker rooms because of her gender identity and gender nonconformity, violating Title IX. On November 2, 2015, OCR concluded its almost two-year investigation.

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Happy Holidays from HLERK

Remarkably, the IASB/IASA/IASBO Joint Conference and Thanksgiving holiday are behind us, and 2015 nears its end.

We begin by thanking each of you who attended our Joint Conference activities and our reception at Millennium Park. We also wish to thank each of our clients and friends who have placed their trust and confidence in HLERK over the past year.

We especially thank the many new school districts and cooperatives who have joined our client family in 2015 and entrusted their needs to us to help them navigate a remarkably complex legal environment.

2015 saw HLERK attorneys again honored by their peers and by your professional organizations for leadership and excellence. Our commitment, however, is always to excellence in serving the Illinois school community. In response to an ever-changing legal environment, HLERK redoubled its efforts in 2015, together with your professional organizations, at the local, state, and federal levels to inform and guide the school community.

HLERK joined with IASA on the acclaimed state-wide *Year in Review* conferences, served

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Consumer Price Index

Percent change for the month of **October 2015**, for the urban wage earners and clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	-0.1	-0.2
12 Mth	-0.2	-0.7
St. Louis, 1st Half 2015		
6 Mth	-0.7	-0.9
12 Mth	-0.9	-1.2
U.S. Mthly	0.0	-0.1
12 Mth	0.2	-0.4

November CPI figures will be released December 20, 2015.

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- **Remember to set dates for semi-annual review of closed session minutes to determine whether such minutes can be publicly disclosed (typically January and June).**
- **Remember to order your copy of the IASA *Year in Review* conference handbook by sending in the attached order form.**
- **Remember to implement student growth as part of your school district’s evaluation plan prior to September 1, 2016 (with Joint Committee work done within 180 days of its first meeting), and prepare to implement SB100 before the start of the next school year.**

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Happy Holidays Cont. as general counsel to the Illinois Alliance of Administrators of Special Education, and continues to work with the National School Boards Association on IDEA reauthorization.

As we enter 2016, we will keep a close eye on legislative developments, including school finance reform in Springfield, as well as *Elementary and Secondary Education Act* reauthorization in Washington. Passage of a new ESEA is expected in the near future.

We also will be working with your professional organizations and our many school district clients regarding implementation of SB100 governing school discipline. Look for upcoming IASA seminars on SB100 implementation.

In labor and personnel, 2016 marks the implementation date for all school districts to fully implement PERA requirements governing student growth in evaluation plans, as well as a host of procedural requirements. Contact any of our labor/personnel group with your implementation inquiries.

While the year will bring us many surprises, one thing is certain: Illinois schools will continue functioning in a difficult financial environment and a remarkably complex legal and policy environment. Every school district will require highly specialized expertise to successfully manage these environments.

We hope you continue to use the *Extra Mile*, as well as the ever-growing HLERK in-service and administrator academy programs, to help you manage your legal risk in a time of intense change and financial crisis. In our 26th year, we will intensify our commitment to excellence in service to our clients and the entire Illinois school community.

Of course, with the winter holidays rapidly approaching, we wish each of you a safe, happy, and healthy holiday season.

We look forward to publishing the Extra Mile in 2016 to keep you abreast of breaking legal developments, many of which you will find nowhere else. From all of us at HLERK, Happy Holidays!

Concussion Law Effective Date Extended to the 2016-2017 School Year--As reported in the October *Extra Mile*, the *Youth Sports Concussion Safety Act (Public Act 99-0245)* was recently enacted. The law specifies requirements for concussion safety for public school districts, charter schools, and private schools with students participating in interscholastic athletic activities.

The law went into effect when it was signed by the Governor on August 3, 2015. This did not give schools much time to put in place all of the requirements under the new law. As a result, a "trailer bill" was introduced to push back the effective date. On November 20, 2015, the Governor approved the trailer bill ([Public Act 99-0486](#)), extending the effective

date of the concussion law to the **2016-2017 school year**. Now schools will have almost a year to prepare for implementing all of the law's requirements.

ISBE is expected to develop guidance documents on the new concussion requirements, and the IHSA will be updating its concussion training courses and forms to be consistent with the new law. For school districts that subscribe to the IASB PRESS policy service, a revised concussion policy was included in IASB's October 2015 issue.

Please refer to the October Extra Mile [article](#) for an overview of the law's requirements. Please contact Jennifer Mueller with your concussion statute inquiries.

Transgender Cont. As stated in the OCR ruling, the student was born male, but from a young age has identified as female. During her middle school years, the student transitioned to living full-time as a young woman, presenting in a female appearance, completed a legal name change, and obtained a passport that reflected a gender change to female. She also was diagnosed and treated for gender dysphoria and takes an ongoing course of hormone therapy.

Prior to matriculating to high school, the student and her parents contacted the high school to discuss the student's name change, her registration as female, her access to girls' restrooms and locker rooms, and her eligibility for girls' athletics. The family informed the district that the student had been subjected to harassment in middle school when she accessed the boys' locker rooms.

In response, the district honored the student's request to be treated as female in all respects except allowing her access to the girls' locker rooms at the high school. The student is identified by her female name, is designated as female in her student records, has unlimited access to all girls' restrooms in the school, and can participate in girls' athletics.

The district, however, refused to allow the student access to the three girls' locker rooms at the school, which include the regular P.E. locker room, the locker room near the pool, and the locker room used for girls' athletics, due to the privacy concerns of other students. Instead, the district offered the student access to alternative locations to change, such as a single-occupancy restroom with lockers installed or separate restrooms by the pool, which OCR determined were not comparable to those provided to other students.

The district did not dispute that it had denied the student access to the girls' locker rooms. However, it asserted legitimate, nondiscriminatory justification that it based its decision on the needs of all students, balancing the student's rights and interests with the privacy concerns of other female students.

OCR found the district's arguments unavailing since, given the fact that the student had asserted her intention to change privately, the district could afford equal access to its locker rooms for all students if it installed and maintained privacy curtains in its locker rooms in sufficient numbers to be reasonably available for any student who wanted privacy.

OCR's efforts to resolve this complaint voluntarily with the district recently succeeded. On December 3, the Board of Education for the district reached a Resolution Agreement with OCR. Without admitting any violation of federal law or regulations or losing any federal funding, the district agreed to allow the student to access the girls' locker rooms at the school if she uses private changing areas.

The district also will install and allow any other students who desire it to use a private changing area or shower in the locker rooms. Furthermore, the district will engage a consultant expert in child and adolescent gender identity and revise the district's nondiscrimination notice to provide additional information about sex discrimination. If requested, the district will provide a support team to the student to provide her access to all school and district facilities and activities.

HLERK has been actively involved in advising school districts throughout Illinois on transgender student issues. Contact Michelle Todd with your inquiries.

Fifth Circuit Upholds Discipline of Student for Online, Off-campus Speech--In *Bell v. Itawamba County School Board*, the Fifth Circuit Court of Appeals, en banc, which does *not* govern Illinois school districts, recently upheld the discipline of a student for online, off-campus speech the student produced without using school resources.

The court found the speech to be directed intentionally at the school community and reasonably understood by school officials to be threatening, harassing, and intimidating to a teacher and held that such speech was *not* protected by the First Amendment.

Previously, in December 2014, in a divided panel of three judges, the Fifth Circuit held, among other things, that the school board had violated the student's First Amendment right by disciplining him. The student then petitioned for a rehearing of the matter "en banc," meaning that the entire bench of judges should hear his case.

Taylor Bell, a high school student, posted a rap recording containing threatening language against two high school teachers/coaches on the Internet (first on his publicly accessible Facebook profile page and then on YouTube). In the recording, Bell names the two teachers and describes violent acts to be carried out against them. Interpreting the language as threatening, harassing, and intimidating to the teachers, the school board suspended Bell for one week and placed him in an alternative school for an additional six weeks.

Bell filed suit in response, claiming that being disciplined violated his First Amendment right to free speech. The school district presented evidence that the two coaches who were threatened were adversely affected in their work at school as a result of the video, including feeling uncomfortable around female students as a result of allegations in the rap song suggesting one coach had engaged in misconduct with them.

The other coach testified that he was scared and that he would not allow members of the school basketball team he coached to leave after games until he was in his vehicle.

Noting increasing concerns regarding school violence as well as the proliferation of Internet access and social media use, the court concluded that school officials must be able to discipline Bell in this instance in order to react quickly and efficiently to protect students and faculty.

The court also explained that the speaker's intent matters when determining whether the off-campus speech warrants disciplinary action by schools. Because Bell admitted that his purpose was to increase awareness of alleged misconduct by the coaches, that he knew people were going to listen to it, and that students have Facebook, the court concluded he intended to direct his video at the school community.

The law in the area of disciplining students for their off-campus speech is by no means settled. For instance, the entire court of the Third Circuit Court of Appeals (which also does *not* govern Illinois) has previously issued two separate decisions finding that school suspensions given to students for creating inappropriate profiles of their school principals on MySpace violated the students' First Amendment rights. While not governing law in Illinois, these cases illustrate the difficulties facing school administrators seeking to manage student use of a variety of social media.

Unless and until the Supreme Court resolves these issues, school districts seeking to discipline students for inappropriate use of social media outside of school face significant constitutional hurdles. Contact Bennett Rodick or Lori Martin regarding your student discipline inquiries.