

CLIENT NEWS ALERT

Supreme Court Returns Transgender Student Rights Case to Lower Court

March 2017

On March 6, 2017, the United States Supreme Court sent the case of Virginia transgender high school student Gavin Grimm back to an appellate court, which must now consider the case and the parties' arguments "in light of the guidance document issued by the Department of Education and Department of Justice on February 22, 2017" that rescinded the Obama administration's May 2016 guidance on transgender student rights and facilities access. (*Gloucester County School Board v. G.G.* (March 6, 2017, No. 16-273).)

Last April, the United States Court of Appeals for the Fourth Circuit held that courts should defer to the Obama administration's guidance on and interpretation of Title IX and Title IX's regulations (specifically, 34 C.F.R. § 106.33) relative to access to school restrooms based upon gender identity. The appellate court's ruling held that Grimm should have access to school restrooms based upon gender identity.

The Supreme Court's order to vacate the court of appeals' decision follows the Trump administration's rescission in February of the Obama administration's guidance. ([See 2017 CNB No. 9.](#)) For now, it is left to the lower courts in this matter to decide whether gender identity discrimination constitutes sex-based discrimination prohibited by Title IX, or possibly under other theories of law, such as constitutional equal protection.

As we await further guidance from the courts on this important interpretation of federal law, California school districts are reminded that their obligations under state law remain unchanged. AB 1266 (Ed. Code, § 221.5(f)), which became effective January 1, 2014, and other state laws (Ed. Code, §§ 220, 234.1), prohibit discrimination against students based upon their gender identities and require that students be permitted to use facilities and participate in sex-segregated school programs and activities that are consistent with their gender identities. (See [2014 Client News Brief No. 14](#) and [2016 Client News Brief No. 16.](#))

For more information on the Supreme Court's decision or on federal Title IX guidance and state law regarding gender identity, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).



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