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Transgender Considerations in Physical Education

Maday v. Township High School District 211 & Students and Parents for Privacy
2018 IL. App (1st) 180294
(Ill. App. Ct. 2018)
November 30, 2018

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A transgender high school student was denied a motion for a preliminary injunction against her school, which would have allowed her to have full access to her preferred gender locker room, on the concurrent basis of timing and mootness of the case.

Facts of the Case

In July of 2017 the plaintiff, a minor at an Illinois high school, planned on enrolling in an adventure education physical education (PE) course for the following year. This course required students to change into swimsuits. For transgender students the school district offered two choices for PE: transgender students who identify as female would change their clothes in a changing stall within the women's locker room, or the district would grant a PE waiver. Transgender students would also have access to the showers, which had curtains. The parents of the plaintiff agreed to a PE waiver for the student's senior year.

When the plaintiff turned 18 years old, she filed a lawsuit claiming that the school district violated the Illinois Human Rights Act. She claimed the district denied her unrestricted use of the female locker room to change. She further argued that the district restricted the area in which she could change, as opposed to restricting all girls' changing options. She filed the complaint on November 30, 2017, along with a motion for preliminary injunction on December 13, 2017. Spring term started on January 9, 2018, which was also her last semester in high school.

Case Outcome

The plaintiff sought relief via the motion for a preliminary injunction, which would allow her full and equal access to the girls' locker room under the Illinois Human Rights Act. This Act says, in part, "It is a civil rights violation for any person on the basis of unlawful discrimination to… deny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation" (775 ILCS 5/5-102, Ch. 68). In asking the court to grant this preliminary injunction, the school district asserted that this request would disrupt their balancing test, in which the school district examines how to balance access for transgendered students verses the privacy of all its 12,000 students.

The school district also submitted that the transgender locker room access offered to the plaintiff was the same offer that the Office of Civil Rights claimed to be compliant with federal civil rights legislation. Further, the school district claimed that the plaintiff would likely not succeed with the complaint, as there would be a lack of substantive evidence. Lastly, the school district claimed that the plaintiff failed to show that not having full locker-room access would cause irreparable injury, and that the school district providing an alternative location violated the plaintiff's right to access a public facility. The Students and Parents for Privacy group also filed to intervene as a co-defendant in this case, as the group's student members did not approve of sharing private facilities with those of a different sex anatomically, regardless of that person's mind regarding their gender.

The circuit court found that public accommodations in schools would differ from other forms of public accommodation under the Illinois Human Rights Act. Further, the circuit court denied the plaintiff's motion for preliminary injunction on the basis of an unsuccessful case based on the wording of the Illinois Human Rights Act. In short, the Act states that jurisdiction is limited to instances of non-enrollment; denial of access to facilities, goods or services; or instances where a public entity would not step in to alleviate harassment (Illinois Human Rights Act, 2016). The plaintiff then filed a notice of interlocutory appeal on February 7, 2018, claiming that the school district's policy violates the Illinois Human Rights Act. All parties agreed for the hearing to take place on June 26, 2018, while the plaintiff graduated on May 20, 2018.

Disclaimer

The comments regarding the case presented here are generalized thoughts and not hard law. The cases in The Law and You are illustrative of situations that can happen and how the courts have responded to the circumstances. The generalized thoughts may not apply or be proper in all states and jurisdictions and under all circumstances. Finally, it is important to understand that the tips provided may not apply in your state or jurisdiction.

On appeal, the Illinois Court of Appeals believed that the plaintiff's claim was a moot point, as the plaintiff had already graduated high school, and thus would no longer need to take a physical education course. The plaintiff claimed that the case should still be heard under the public-interest exception to the mootness doctrine, which includes "the existence of a question of a public nature, the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties, and the likelihood that the question will recur" (*Mount Carmel High School v. Illinois High School Association*, 1996). The plaintiff failed all three parts of this test, according to the court, and the plaintiff's claim was dismissed. It should be noted that the plaintiff's appeal was a case of mootness as opposed to access at this point.

Practical Implications

While this case resulted in a denial of an appeal, the case highlighted the need for physical educators to accommodate diverse populations. In short, the plaintiff's complaint failed because the plaintiff could not seek realistic relief (being granted full access to a high school bathroom for a high school physical education class) from the courts in a timely manner. Further, because the plaintiff narrowed the scope of their complaint to include only the plaintiff, as opposed to all transgendered individuals, the case lacked a broad, public interest.

In similar cases, Title IX (Department of Justice, 2015) was brought up in plaintiffs' complaints. In Wisconsin a transgender student, who identified as male, sued the Kenosha Unified School District under both Title IX and the Fourteenth Amendment's Equal Protection Clause, as the school district would not allow said student to enter the boys' restroom (*Whitaker v. Kenosha Unified School District*, 2017). He claimed that the school district's actions were increasing his chances for vasovagal syncope due to non-accommodation, where he would experience fainting and/or seizures, as well as suicidal tendencies. In this case the courts granted a preliminary injunction in favor of the plaintiff, thus allowing him to use the boys' restroom. The *Whitaker* case shows the need for school districts to perform due diligence with transgender students. Unlike *Maday* (2018), *Whitaker* did not submit transgender student plans through the Office of Civil Rights, which added a layer of protection to that school district.

Other cases involving transgender students have brought up mootness (*Grimm v. Gloucester County School Board*, 2017). Ultimately, the Supreme Court and Court of Appeals remanded this case — where a male-identified transgender student sued to use the boys' restroom — to the District Court to hear if the case was moot, since said student had graduated. The case began in 2015 but was tied up in the courts as late as fall of 2017, months after this student graduated. Thus, cases of individuals suing for the right to use their preferred gender's bathroom facilities have seen success for the individual, although widespread relief for all transgender students has yet to be ruled. In *Grimm* (2017) and *Whitaker* (2017), both plaintiffs asserted that Title IX and the Fourteenth Amendment to the Constitution (Equal Protection) both apply. These avenues, or others created through legislation, may be the key to clarifying transgender rights.

Although *Maday* (2018) ended as a moot case, administrators need to be aware of transgender students' needs. A trend throughout the cases presented is for a student to seek relief for themselves, be granted said relief, but without grandiose claims for all transgender students.

Conclusion

Although *Maday* (2018) ended as a moot case, administrators need to be aware of transgender students' needs. A trend throughout the cases presented is for a student to seek relief for themselves, be granted said relief, but without grandiose claims for all transgender students. Administrators may want to further observe Title IX's jurisdiction over cases such as these. Further, due diligence by schools needs to be taken in cases involving transgender students for the school's protection. Involving the Office of Civil Rights and coming to an agreement among all parties is imperative to keep schools out of legal troubles.

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