

Judge sides against parents who want to ban transgender student from locker room in District 211



U.S. Magistrate Judge Jeffrey Gilbert ruled against a group of parents seeking an injunction denying a transgender student the ability to use Palatine-based Township High School District 211's restrooms and locker rooms Oct. 18, 2016. (Getty Images)

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Chicago Tribune

OCTOBER 19, 2016, 6:55 AM

Writing that high school students do not have a constitutional protection against sharing locker rooms or bathrooms with transgender peers, a federal judge has sided against a group of parents who sued a Palatine school district seeking to deny locker room access to a transgender student.

Township High School District 211 came under fire for allowing transgender students to use the facilities of their gender identity. A group of parents and students sued the district and federal government, arguing that the district's decision trampled the students' constitutional right to privacy and created a hostile environment.

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✕ to temporarily cut off the student's access to the students, until the lawsuit is resolved.

In a lengthy report and recommendation, U.S. Magistrate Judge Jeffrey Gilbert wrote that high school students "do not have a constitutional right not to share restrooms or locker rooms with transgender students whose sex assigned at birth is different than theirs."

He also wrote that sharing those spaces with transgender students "does not create a severe, pervasive, or objectively offensive hostile environment ... given the privacy protections District 211 has put in place."

U.S. District Judge Jorge Alonso will review the recommendation and make the final decision.

Gilbert praised the district for having "balanced the interests of all its students" when it granted access to transgender students. While the district had long allowed transgender students use of the bathrooms of their gender identity, it wasn't until one student filed a complaint with federal education officials that it granted that student, identified publicly as Student A, access to the girls locker room in January.

Sally Scott, an attorney representing District 211, reiterated the judge's remarks in a statement and added that the district "affirms and supports the identity of all its students." Scott, who had argued against the injunction blocking access to transgender students, said the recommendation means the district can continue to provide locker room access for transgender students on a case-by-case basis.

District officials granted Student A access to the locker room after federal education officials found the district had violated Title IX, the federal law that bans discrimination on the basis of sex. Following months of rancorous community debate and facing the threat of losing millions of federal education dollars, the district agreed to allow the student to use the locker room. The district installed privacy stalls for any student wishing to change in private.

The American Civil Liberties Union of Illinois, which represents Student A, also heralded Tuesday's recommendation as a victory.

"The judge plainly recognized that the organizations who filed this case are unable to demonstrate any harm to their clients from sharing restrooms and locker rooms with students they perceive as different, while Student A and other transgender students would have been isolated and stigmatized if they were forced out of the appropriate restrooms and locker rooms after using the facilities without incident for several years," the ACLU's John Knight said in a statement.

Meanwhile, the attorneys for the group suing the district and the U.S. Departments of Education and Justice urged the court to reject the judge's recommendations.

"School policies should protect the privacy and safety of all students, no matter who they are," Alliance Defending Freedom attorney Gary McCaleb said in a statement. "Young students should not be forced into an intimate setting like a locker room with someone of the opposite sex."

The group of parents and students that filed the lawsuit argued that gender should be unambiguously defined as a person's sex at birth. In his report, Gilbert noted that recent court rulings are trending toward a more

expansive understanding of sex to include gender identity.

Student A, who was born male, has identified as female for several years. She also has changed her name legally, obtained a passport that identifies her as female and received hormone therapy.

Attorneys have 14 days to file any objections to the judge's recommendation.

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