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United States Court of Appeals for the Fourth Circuit

**The Supreme Court declined to hear an appeal from a Virginia school board that wanted to reinstate a transgender bathroom ban. By declining to hear the case, the Supreme court left the Fourth Circuit’s ruling in place – a transgender bathroom ban violated the student’s rights to equal protection.**

*Equal protection and [Title IX](#) can protect transgender students from school bathroom policies that prohibit students from affirming their gender identity.*

Gavin Grimm was fifteen years old when the principal of his public Virginia high school said that he could use the boys bathroom at his school. Grimm, a transgender student, identified as male and expressed himself as such. After using the boys bathroom for seven weeks without incident, the school board reversed the gender-affirming policy, and instead required Grimm to use restrooms that corresponded with his assigned sex (female), or otherwise use private bathrooms.

Grimm claimed that the school’s policy requiring him to use the girls bathroom, or a specifically designated single-stall restroom, was discriminatory under the protections afforded by Title IX. Grimm claimed, under oath, that he found the practice stigmatizing. Notably, Title IX protects people from discrimination on the basis of sex in any education program or activity that receives federal financial assistance. The Fourth Circuit's unequivocal ruling stated the court had “little difficulty holding that a bathroom policy precluding Grimm from using the boy's restrooms discriminated against him ‘on the basis of sex,’” therefore violating Title IX.

When it ruled that Grimm’s rights were violated based on the protections created by Title IX, the Fourth Circuit joined a chorus of other courts and agencies (including the U.S. Department of Education, U.S. Department of Justice, U.S. Attorney General’s Office, and the Office of Civil Rights) that have also said that transgender students are protected by Title IX.

Grimm’s case is similar to a 2018 case that came out of an Oregon school district. In the Oregon case, *Parents for Privacy v. Barr*, a school thoughtfully built out a plan with a student regarding how the student could safely use the bathrooms in the school in a way that was gender-

affirming for the transgender student. Parents of some other students in the high school claimed that by allowing the transgender student to use gender-affirming bathrooms, the school was thereby discriminating against the cisgender students who did not want to use the same facilities as a transgender student. The lower courts ruled that, conversely, the school's policy treated all students equally, whereas the parents' preference to force the transgender student to use a different bathroom would have been a discriminatory policy. Much like the Grimm case discussed above, the Supreme Court denied to hear the case.

Additionally, Oregon law statutorily prohibits discrimination based on sexual orientation. [ORS 659.850\(2\)](#). Oregon law defines sexual orientation as the “actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.” [ORS 174.100\(7\)](#).

In order to comply with the law, and in order to make sure that schools are safe spaces in which students are free to learn, the Oregon Department of Education released official guidance to schools in 2016, which can be found here—[Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students Issued](#). More recently, ODE also released the [LGBTQ2SIA+ Student Success Plan](#) in June 2020.

*Gloucester County School Board v. Grimm, Gavin*, No. 20-1163, 2021 WL 2637992 (U.S. June 28, 2021)

*Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020)

Take-away: School districts should follow ODE guidelines that say, “alternative accommodations, such as a single ‘unisex’ bathroom or private changing space, should be made available to students who request them, but should not be forced upon students, or presented as the only option.” Gender identity and gender expression are highly personal subjects. School staff should consult the individual student to discover if the student’s needs would be met most appropriately by allowing the use of a gender-affirming bathroom, or a single-stall unisex bathroom.