



**Key points:**

- **Judge orders Virginia school board to grant bathroom access to transgender boy**
- **School district in Dorchester County, S.C., reaches agreement with OCR**
- **No resistance to federal, state guidance seen in New York, school attorney says**

**Willingly or not, many districts heed transgender guidance**

The political, legal, and cultural upheaval seen this spring over how to treat transgender students is not over yet, and indeed may linger for years.

Nonetheless, many state and local officials have begun to treat transgender students in accordance with their gender identity, sometimes with a nudge from OCR or the courts.

In Gloucester County, Va., for example, the [school board](#) is under an injunction issued June 23 by U.S. District Judge Robert Doumar. In his injunction, Doumar told the board to let a transgender boy use the boys' bathroom in light of a ruling by the 4th U.S. Circuit Court of Appeals affirming the student's right to invoke Title IX's ban on sex discrimination. *G.G. v. Gloucester County Sch. Bd.*, [116 LRP 15374](#) (4th Cir. 04/19/16), *petition for reh'g en banc denied*, [116 LRP 22951](#) (4th Cir. 05/31/16).

In South Carolina, officials at [Dorchester County School District Two](#) reached a resolution agreement with OCR on June 16 regarding a transgender girl.

"For the duration of the Student's enrollment in the District, the District will provide the Student access to sex-specific facilities designated for female students at school consistent with her gender identity," according to the agreement, which was followed by a letter of findings dated June 21. *Dorchester County (SC) Sch. Dist. Two*, [116 LRP 26974](#) (OCR 06/21/16).

And in New York, districts have shown no resistance to [guidance](#) issued last year by the [New York State Education Department](#), according to Timothy Mahoney, a school attorney at [Frazer & Feldman](#) in Garden City, N.Y.

"I've definitely not been presented with anything like that," he said, using his own part of the state as an example. "This isn't in New York City -- in Nassau County, it's much more conservative, it's Republican-leaning. Notwithstanding, the local school districts have LGBTQ student alliances, there's outreach from staff to that community, and board members tend to be on board with, 'If [the New York State Education Department] says to do this, [then do it].'"

**To follow or not to follow**

At the national level, the rights of transgender students remain in flux. In May, for example, when OCR and the Justice Department issued a *Dear Colleague Letter*, [116 LRP 19809](#) (OCR/DOJ 05/13/16), the National School Boards Association declared the matter still open.

"The guidance issued today by the Departments of Education and Justice adds another voice to an ongoing conversation about how gender identity is addressed and expresses an interpretation of Title IX that is unsettled law," it said.

But in New York, district obligations are clear, according to an article that Mahoney and colleague Laura Ferrugiari have submitted for publication by the [Nassau County Bar Association](#).

"It now appears to be a well-settled mandate that school districts are obligated to prevent discrimination and harassment of students based on sex, gender identity and gender expression in the school setting," they wrote. "[The state-level] guidance memo is intended to facilitate compliance with these laws by providing additional information, definitions, and scenarios to assist school districts."

Mahoney and Ferrugiari also point to [guidance](#) adopted last year by the [New York State Public High School Athletic Association](#).

"Once a member school has rendered a determination of eligibility to try out for an interscholastic sports team or teams which corresponds to the student's gender identity, the eligibility is granted for the duration of the student's participation in interscholastic athletics," the guidance says.

In short, Mahoney said, a shift is occurring, and districts are wise to get ahead of the curve.

"In our state education law, there is a series of policies boards must adopt, and nothing in the transgender recommendations has risen to that level," he said.

Nonetheless, he said, "if I were advising a client about whether they should [follow them] or not, I would probably advise them, that, yes, they should adopt this guidance."

*See also:*

- [Kansas state board of education criticizes federal transgender guidance \(June 20\)](#)
- [4th Circuit refuses to stay transgender ruling pending Supreme Court review \(June 13\)](#)
- [Denial in 4th Circuit transgender case opens door to Supreme Court review -- or not \(June 1\)](#)

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