

SNIFFEN & SPELLMAN, P.A.



Education Law Alert

Special Alert – August 2016

U.S. Supreme Court Issues Immediate Stay in G.G. v. Gloucester Transgender Bathroom Case)

The collective education world has been watching closely the status of G.G. v. Gloucester County School Board. The key G.G. ruling was issued by the Fourth Circuit which held that it was error for the lower trial court to not accept the U.S. Department of Education's ("DOE") interpretation of the definition of "sex." The lower trial court held "sex" meant birth or biological gender. The Fourth Circuit sided with the DOE and concluded that "sex" meant both biological sex and gender identity and, therefore, G.G. was protected from sex based discrimination under Title IX. Therefore, G.G. was permitted to use the bathroom of his identified gender. The Fourth Circuit reasoned that DOE's interpretation was entitled to deference under the law.

On May 31, 2016, the Fourth Circuit denied the School Board's Petitioner for Rehearing. In a lengthy dissent, Judge Niemeyer strongly encouraged the U.S. Supreme Court to accept review of the case because of its wide-ranging implications.

Yesterday, the U.S. Supreme Court issued an Order (5-3 decision) staying the Fourth Circuit's decision pending the timely filing and disposition of a petition for writ of certiorari. The Court reasoned, "granting the stay will preserve the status quo (as of the time the Court of Appeals made its decision) until the Court considers the forthcoming petition for certiorari."

The immediate impact of the decision is that G.G. may not use the bathroom consistent with his gender identity. However, it is not a decision on the merits and should not be viewed as having any precedential value. We will keep you apprised of any further decision by the U.S. Supreme Court.

A copy of the Order is available at the following link: [G.G. v. Gloucester](#).