



How the Supreme Court's *Bostock* ruling on LGBT Employment Discrimination Affects Schools

In a landmark 6–3 decision, on Monday, June 15, 2020, the Supreme Court ruled in [*Bostock v. Clayton County, Georgia*](#) that Title VII of the Civil Rights Act of 1964 protects gay and transgender individuals from employment discrimination.

The Court considered three cases in which employers allegedly fired long-term employees because they were either gay or transgender. In one case, a male employee was fired after joining a gay recreational softball league. In another case, a male employee was fired from his skydiving job just days after mentioning that he was gay. In the third case, a transgender employee, who presented as a male when she was hired, was fired after informing her employer that she now planned to “live and work full-time as a woman.”

Title VII protects employees from discrimination on the basis of their race, color, religion, sex, or national origin. The Court reasoned that because discrimination based on the employee’s sexual orientation, gender identity, or gender expression requires an employer to “intentionally treat individual employees differently because of their sex,” an employer violates Title VII when it intentionally penalizes an employee for this reason. “An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”

This ruling has an immediate impact on school districts’ employment decisions. LGBT teachers and school employees have worried about the discrimination they might face if they come out at work or in the classroom—now, they are protected by Title VII.

Although the *Bostock* decision is limited to employment discrimination, it is likely to have future impact on Title IX’s protections against sex discrimination, particularly regarding transgender students. As Justice Alito alluded to in his dissent, “today’s decision may have effects that extend well beyond the domain of federal antidiscrimination statutes. This potential is illustrated by pending and recent lower court cases in which transgender individuals have challenged a variety of federal, state, and local laws and policies on constitutional grounds.” These pending cases include issues such as which bathroom a transgender student can use or whether a transgender athlete can compete based on their gender identity or based on their biological sex.

Until these pending cases are resolved, yesterday’s Supreme Court decision may prove impactful on Title IX and contrary to the U.S. Department of Education’s [current stance](#) on transgender students. For example, last month the [Department of Education stated](#) that schools must require transgender student athletes to compete based on their biological sex or else risk their Title IX funding. Marshall Melhorn attorneys are available to help you prepare for these pending issues.

If you have any questions about this Supreme Court decision and its impact on your district, please contact a member of the Education Practice Group.



messenger

Amy M. Natyshak
natyshak@marshall-melhorn.com
419-249-7106

Shawn A. Nelson
nelson@marshall-melhorn.com
419-249-7164

Michael S. Scalzo
scalzo@marshall-melhorn.com
419-249-7129

Jennifer J. Dawson
dawson@marshall-melhorn.com
419-249-7139

Krysten Beech
beech@marshall-melhorn.com
419-249-7179

Matthew J. Fischer
fischer@marshall-melhorn.com
419-249-7119

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Contact Us

MARSHALL MELHORN, LLC

4 Seagate, F 8 | Toledo, OH 43604 | D 419.249.7100 | F 419.249.7151