

BASD Statement referring to Memorandum Opinion and Order
August 30, 2017

On August 25, 2017, Judge Smith of the United States District Court for the Eastern District of Pennsylvania issued a Memorandum Opinion and Order determining whether the court should issue a preliminary injunction prohibiting the Boyertown Area School District from maintaining its practice that started in the 2016–2017 school year of allowing transgender students to use the bathrooms and locker rooms of the gender to which they identify. The Court considered the personal privacy rights of Boyertown's high school students in issuing its ruling.

The case involves four students, three of whom will be seniors during the 2017–2018 school year and one student who recently graduated from Boyertown. These students collectively claim that Boyertown's unwritten practice of allowing transgender students to access bathrooms and locker rooms consistent with their gender identity violates their constitutional right to privacy, violates their right of access to educational opportunities under Title IX because they were subject to a hostile environment and violates their Pennsylvania common law right of privacy in using bathrooms and locker rooms.

The four students wanted the school district to cease its practice immediately and return to the prior practice of requiring all students to only use the privacy facilities corresponding to their biological gender.

Following evidentiary hearings and a thorough review of all of the evidence, the Court ruled that the four students are not entitled to preliminary relief because they did not show that they are likely to succeed on the merits of their cases and they failed to show irreparable harm.

What this means as a practical matter is that Boyertown's current practice of allowing transgender students properly identified by the school district administration to use the bathroom and locker rooms of the gender to which they identify will continue. The school district is not required to go back to their prior practice of requiring all students to only use the privacy facilities corresponding to their biological gender. The Court rejected the student's concerns with being in privacy facilities with transgender students regardless of whether the transgender students actually view them in the state of partial undress and the court rejected the concerns relating to the possibility of viewing a transgender person in a state of undress or having a transgender person present to hear them while they are attending to their personal needs when they are in the bathroom.

Boyertown's current practice is not only to accommodate the needs of transgender students, but also to accommodate the needs of non-transgender students who are concerned about privacy issues. The District has successfully accommodated students who are uncomfortable about its current practice and have permitted students to use private facilities or areas within the locker room where there is a greater sense of privacy.

Recognizing that this Court decision is only a preliminary decision that will require a final ruling from Judge Smith and possible appeals through the court system and recognizing that the issues raised in this case is part of a greater societal debate over transgender rights and the rights of privacy, the School Board and the Administration are looking to explore potential facility

modifications to more comprehensively address these issues in the future. The School Board has contracted KCBA Architects of Hatfield, Pennsylvania to work with the District in developing locker room and bathroom design options and reflecting their cost impact of these options to the taxpayers of the district. Indeed, a presentation regarding the architectural firm's plan of addressing these issues was made before the School Board at its Board meeting of August 22, 2017. At this Board meeting, the School Board moved forward with the proposed plan of gathering this information that will be preceded by a community survey.

The Boyertown School Board and Administration are attempting to balance the need to accommodate its transgender students, the privacy concerns of parents and students, the cost of facility modifications to the taxpayers and at the same time continue to ensure the safety of all students in the district. This is not an easy task, but the School Board believes that it is at the forefront of sensitively addressing the needs of the students and community it serves by approaching these issues in an organized and analytical fashion.

Should a student or parent have any questions regarding the district's practices involving these issues, students and parents should feel free to contact the student's school counselor or building principal.