

In This Issue

Transgender Accommodations and Parental Rights

Repeated Assaults of Kindergartner on School Bus Lead to Various Federal Law Claims

Office of Open Records Holds that Certain Records of a Booster Group are Not Records of the School District

Federal Court Refuses to Dismiss Claims Brought Under Pennsylvania's Criminal History Record Information Act ("CHRIA")

Failure to Address Harassment Supports Discrimination Claims

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TRANSGENDER ACCOMMODATIONS AND PARENTAL RIGHTS

Michelle Landerer individually and as Next Friend of her daughter O.G., and son, J.G., v. Dover Area School District, et al., 2025 WL 492002 (M.D. Pa. 2025).

A Pennsylvania federal district court held that a school district may have violated fundamental parental rights by not informing a parent of her child's request to be considered transgender. In 2022, an eighth-grade biological female student told teachers that they wanted to be treated as a boy and use the name Caleb. Following the request, emotional support teachers regularly met with the student for the purpose of affirming their request and facilitating their transition. The student's parent was not aware of this request and school officials did not inform the parent of the request. In their suit, the parent alleged that the school district had a de facto policy that "prohibit[ed] parental notification when children request to socially transition to another gender identity unless the minor child consents."

The court held that the parent successfully pled a violation of her substantive due process rights with regard to the fundamental right to direct the care, custody and control of her child under Section 1983. In particular, the court concluded that the school district's failure to inform the parent of the child's requests and its undisclosed decision to provide counseling to the student in relation to gender transitioning as alleged was a "reckless disregard" of the parent's right as decision-maker for her child. The court also

found that the parent could proceed with a claim regarding the right to direct medical care, pointing to allegations that staff engaged in counseling with the student "for the purpose of affirming [the student's] requested gender identity," while the student had separate mental health diagnoses.

Stephen Foote, et al v. Ludlow School Committee, et al, 128 F.4th 336 (1st Cir. 2025).

A similar fact pattern led to a different result in a case before the U.S. First Circuit Court of Appeals. Parents of a middle school student sued the Ludlow School Committee and school officials, alleging that the district concealed their child's gender identity from them and infringed upon their fundamental rights under the Due Process Clause of the 14th Amendment. The First Circuit acknowledged the importance of parental rights in directing their child's upbringing, education and health, but emphasized that these rights are not unlimited. The court asserted that public schools have discretion over curricular and administrative decisions and parents cannot use the Due Process Clause to dictate school policies. The court held that the district's protocol of nondisclosure regarding a student's gender expression without the student's consent did not

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amount to a substantive due process violation. Accordingly, the court affirmed a lower court's dismissal of the claim, holding that the parents failed to state a viable constitutional claim.

PRACTICAL ADVICE

These conflicting federal court decisions reflect the unsettled status of the law involving school districts' responsibilities to students and their parents when presented with students' social gender transitioning within the school setting. Optimally, such issues are able to be addressed collaboratively among school officials and parents. Where those circumstances are not present, however, school officials should consult with legal counsel to navigate the particular situation.

PHRC DISCRIMINATION REGULATIONS CHALLENGED

On a related note, several school districts, parents of students across the state, and two members of the Pennsylvania House of Representatives recently filed a declaratory judgment action seeking to invalidate regulations promulgated by the Pennsylvania Human Relations Commission (PHRC) which defined sex discrimination to include discrimination on the basis of gender identity and gender expression. In an approach that mirrored arguments that succeeded before a Kentucky federal court to nullify similar regulations under Title IX as issued by the Biden Administration, the complaint asserts that the General Assembly is the sole authority of law and public policy and that the PHRC violated the nondelegation doctrine and the state constitution by attempting to expand the definition of the term "sex" for purposes of discrimination claims. The petitioners seek a declaration that PHRC regulations are void *ab initio*.



REPEATED ASSAULTS OF KINDERGARTNER ON SCHOOL BUS LEAD TO VARIOUS FEDERAL LAW CLAIMS

Jane and John Doe, as parents and natural guardians of Jane Roe, a minor v. Red Lion Area School District, et al. 2025 U.S. Dist. Lexis 6 (M.d. Pa. 2025).

(A federal district court refuses to dismiss Title IX and federal claims arising from a five-year-old student being assaulted multiple times by the same male student while riding a school bus.)

BACKGROUND

In October 2023, a five-year-old girl (Roe) in the Red Lion Area School District (District) was reportedly physically and sexually assaulted by a male student while riding a school bus. After this incident, no measures were undertaken to supervise or discipline the male student who had assaulted Roe or to separate her from him. Roe's mother claims to have informed the elementary school principal about the incident. In addition, the male student in question had purportedly previously assaulted another young girl. A second assault of Roe by the same male student occurred in January 2024, after which Roe's family removed her from the school district.

Subsequently, Roe's parents filed suit against the District and alleged myriad legal violations, including under Title IX, the Fourteenth Amendment, and Pennsylvania law. The District moved to dismiss the suit for failure to state a claim.

DISCUSSION

In its decision, the district court allowed the Plaintiffs' Title IX claims against the District to proceed, as the court believed that the Plaintiffs met the requirements that 1) the harassment experienced by Roe be "severe or pervasive" and 2) there be "deliberate indifference" on the part of the District. The harassment of Roe was deemed to be severe or pervasive because the same student assaulted her multiple times and she was forced to ride the bus with this student each day.

Moreover, the court found sufficient allegations of deliberate indifference to gender-based discrimination because the principal of the elementary school allegedly knew of the male student's propensity to assault female students and took no action. The complaint asserts that the District failed to take concrete actions to prevent the assault from occurring, such as, for example, suspension, expulsion, staffing the bus in question with monitors, or physically separating the male student from Roe. Thus, the court found Plaintiffs' Title IX claims plausible and refused to dismiss the complaint.

Additionally, the Plaintiffs put forward multiple claims under federal law. Plaintiffs stated a plausible claim under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), as the amended complaint argued that the District had a policy of ignoring female victims of assault. The court noted that a plaintiff need only allege facts "showing that the relevant policy — here, turning a blind eye to reports of assault by female students — proximately caused injury." The court concluded that the Plaintiffs successfully showed an "affirmative link between the policy and the purported violation." Hence, Plaintiffs stated a plausible claim under *Monell*.

Plaintiffs also argued a due process claim under the Fourteenth Amendment, relying upon the state-created danger doctrine. This is an exception to the rule that the Due Process Clause typically does not impose a duty on the state to protect against harm done by a private individual. To prevail on a due process claim, a plaintiff would have to prove that a state actor used his authority in a way that created a danger to the citizen or that the state actor's inaction made the citizen more vulnerable to harm. This would be satisfied if a school district placed a student in a dangerous situation and did not protect that student "from a known or obvious hazard." Here, the Plaintiffs contended that the elementary school principal knew of the previous assault of Roe but allowed the student who committed the assault to ride the bus with her unsupervised. The court stated that requiring Roe to ride the bus with her

abuser without any supervision placed her in serious jeopardy of being assaulted again. Moreover, the District failed to protect her from harm that should have been foreseeable, as she had previously been assaulted by the same male student. Hence, the court ruled that Plaintiffs' due process claim survived the District's motion to dismiss.

Also, the Plaintiffs' equal protection claim was not dismissed by the court. A plaintiff must plausibly plead intentional discrimination and prove 1) harassment because of a protected characteristic, 2) school officials were aware of the harassment, and 3) the school district offered a clearly unreasonable response in light of the circumstances. Here, Plaintiffs alleged the male student in question only attacked female students and that the District had a policy of covering up or ignoring such harassment. Moreover, the only response from the District was to rely on a malfunctioning camera. It was "clearly unreasonable" for the District to rely on one camera of questionable functionality if the District did indeed have prior information regarding the male student's behavior towards Roe and other female students. Thus, the court did not dismiss the Plaintiffs' equal protection claim.

The court did, however, dismiss multiple claims made by the Plaintiffs, including for emotional distress under Title IX and for negligence liability. The court believed that emotional distress damages were barred under Title IX by the U.S. Supreme Court. Regarding negligence liability, the court stated that the Pennsylvania State Tort Claims Act (PSTCA) barred the Plaintiffs' claims because the allegations of assault, although serious, were not factually specific enough. Moreover, the exception for institutional sexual assault was not triggered because the male student did not possess the requisite level of control over Roe or other students. Hence, no exception to PSTCA immunity applied under the facts and circumstances that were alleged by Plaintiffs. Thus, the claim for negligence liability was dismissed.

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PRACTICAL ADVICE

This case provides a demonstrative blueprint for actions that should and should not be undertaken regarding allegations of assault made by students or their parents or guardians. In its opinion, the district court noted responses that the district could have implemented, such as conducting a thorough investigation, replacing a known malfunctioning camera, removing a perpetrator, separating students, or providing monitors, to ensure that no further assaults occurred. In this instance, had the school district undertaken any such measures, it might have avoided viable claims of liability.

**OFFICE OF OPEN RECORDS HOLDS THAT CERTAIN RECORDS OF A BOOSTER GROUP ARE NOT RECORDS OF THE SCHOOL DISTRICT**

Lowry v. Rose Tree Media School District, AP 2024-2478 (Dec. 5, 2024). The Office of Open Records holds that registration forms for a cross-country meet that was organized and run by a booster group on school district property are not records of the school district.

BACKGROUND

A requester submitted a request for records ("Request") pursuant to the Right-to-Know Law ("RTKL") to the District seeking all "registrations for the 9/14/24 Penncrest Invitational Cross-Country Meet" at the District's High School ("Event"). The District denied the Request, asserting that no such records exist because the Event was directed and conducted by the Penncrest Cross-Country Booster Club ("Booster Group") and was neither sponsored nor run by the District.

DISCUSSION

The RTKL defines a "record" as "information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received, or retained pursuant to law or in connection with a transaction, business, or activity of the agency." 65 P.S. § 67.102. The RTKL imposes a two-part inquiry for determining if certain material is a record: 1) does the material document a "transaction or activity of an agency?" and 2) if so, was the material "created, received, or retained...in connection with a transaction, business, or activity of [an] agency?" See 65 P.S. § 67.102.

The Requester argued that the requested registrations were records of the District because: 1) the Cross-Country Meet was held on District property; 2) the registration forms were to be sent to the "Girls Cross Country Team" at the address for the District's High School; 3) the head coach for the District's High School Girls Cross Country Team was listed as the contact person for the Event on one website; 4) checks submitted by participants in the Event were to be made payable to the District's "Girls XC Team"; 5) registration forms used the school's logo; and 6) the District's website, via a connecting website, lists various team sporting events for the year, including this Event.

The District countered that: 1) the Event was directed and conducted by the Booster Group which is a separate entity from the District and over which the District has no control or authority; 2) all participant registrations and checks issued for participation in the Event were received by and processed through the Booster Group with the District receiving neither copies of participant registrations nor copies of any checks issued for participation in the Event; 3) several entities are permitted to use the District's logos; 4) the District had no control or responsibility for the Event, even though it was located on District property at District facilities; 5) District personnel who attended the Event did so in a volunteer capacity or as a parent and were not compensated by the District for attending; 6) the registration forms mailed to the District were turned over to the Booster Group without retention; 7) the District did not receive any money from the Event.

The OOR (Office of Open Records) acknowledged that the record presented factors supportive of both positions but held that the requested registration forms did not document a “transaction or activity” of the District. In reaching this conclusion, the OOR emphasized that the Booster Group had primary control over the Event, processed the registration forms, and did not transfer any of the money to the District. In addition, the record was devoid of any evidence that the District took any action leading up to the Event and that its employees did not participate in the Event in their capacity as District employees.

PRACTICAL ADVICE

This determination confirms that booster groups are separate entities from school districts and that, because of this distinction, records in the possession of such groups are not necessarily records of the school district and subject to the RTKL. In addition, this determination also confirms that records related to events held on school district property by private groups are not necessarily public records.

This determination should not be interpreted, however, as protecting all booster group records from disclosure under the RTKL. For example, school districts, pursuant to Section 511 of the School Code and related policies, require booster groups to submit financial records, such as bank statements, to the school district. Because the School Code creates a statutory duty to oversee the funds of booster groups, records provided to the school district reflect a “transaction or activity” of the school district, are records of the school district, and may be subject to access under the RTKL. See *Drapp v. Cumberland Valley School District*, AP 2025-0069 (holding that bank statements provided to the school district by a booster group pursuant to the School Code and school district policy are records of the school district). Accordingly, if your school district receives any requests for records related to a booster group, you should contact your solicitor.



FEDERAL COURT REFUSES TO DISMISS CLAIMS BROUGHT UNDER PENNSYLVANIA'S CRIMINAL HISTORY RECORD INFORMATION ACT (“CHRIA”)

Deivert v. Zartman and Borough of Northumberland,
2025 WL 83747 (M.D. Pa. 2025)

(Neither a municipality nor a municipal manager had immunity under the Pennsylvania Political Subdivision Tort Claims Act (“PPSTCA”) for the claim by Plaintiff that he was wrongfully discharged under Pennsylvania’s Criminal History Record Information Act (CHIRA).

BACKGROUND

Plaintiff was hired by Defendant Borough after he answered truthfully that he had never been convicted of a felony. When, at the end of his Probationary period, the Plaintiff attempted to join the Union, he was denied permanent employment, discharged, and told the reason was he had a history of misdemeanors and summary offenses.

The Plaintiff Employee claims the true reason for his discharge was his Union activity and attempt to join the Union, which is protected by his First Amendment right to free expression and free association. His lawsuit alleges that the municipality and the municipal manager are liable under §1983 for violating his constitutional rights. The lawsuit also included a pendent state claim that he had been wrongfully denied permanent employment and discharged in violation of Pennsylvania’s Criminal History Record Information Act (CHIRA).

The District Court refused to dismiss the Plaintiff’s federal claims because a discharge or failure to hire based on Union activity or Union membership is a violation of the First Amendment. With respect to the state law claim, Defendants requested the suit be dismissed because they had immunity under the Pennsylvania Political Subdivision Tort Claims Act (“PPSTCA”). Although the Court conceded that the Plaintiff’s claims did not fit within any of the Tort Claims Act’s eight exceptions that allow local agencies and their employees to be liable for damages, the Court

went on to apply several precedents and to conclude that the Criminal History Record Information Act demonstrates a clear legislative intent to hold government entities liable for violations. Therefore, the Court refused to dismiss the state claim against the two Defendants.

DISCUSSION

Ironically, the reason given by the employer as a defense to the claim it violated the Plaintiff's Constitutional right to join a Union, his criminal record of misdemeanors and summary offenses, is the basis of the Plaintiff's claim that his rights were violated under state law. The Court noted that the Defendants failed to raise the argument that the statute was inapplicable because it involved a termination of employment rather than a failure to hire. The Defendants relied solely on the Political Subdivision Torts Act, which the Court concluded was not a valid defense under numerous precedents.

PRACTICAL ADVICE

It appears that regardless of the true reason for the employer's decision to terminate the Plaintiff's probationary employment and deny him a permanent full-time job, its explanation and justification are not compelling and give rise to an inference of pretextual discharge. The Complaint alleges the employer and supervisor were well aware of Plaintiff's record of misdemeanors and summary offenses and did not consider them disqualifying at the time he was originally hired. Moreover, although the Court questioned whether CHIRA applies in a case of termination, the Plaintiff could argue as well that the termination at the end of the probationary period was a denial of permanent employment and, therefore, CHIRA applies.

The dilemma the employer created for itself in this case is a clear reminder to employers that the safest course of action is to monitor an employee's job performance and make employment decisions based on relevant job-related characteristics and performance. This applies to probationary employees as well as regular full-time employees covered by a Union contract, because probationary employees have all the

protections of state and federal law, and can challenge a discharge on those grounds, even if they are only "probationary." In addition, employers should exercise care in considering an employee's criminal record history with respect to any employment decision, given that CHIRA specifically prohibits an employer from relying on criminal history convictions unless they directly relate to suitability for a specific job.



FAILURE TO ADDRESS HARASSMENT SUPPORTS DISCRIMINATION CLAIMS

Jane Doe v. Riverside Sch. Dist., 2024 U.S. Dist. LEXIS 231380 (M.D. Pa., Dec. 23, 2024). After a classmate was convicted for sexual assault of a student outside of school, the student's family alleged the School District took no action to protect the student from ongoing harassment by the perpetrator of the assault. In rejecting the school district's motion to dismiss, the Court held that these allegations were enough to support discrimination claims under Title IX and the Equal Protection clause of the 14th Amendment of the Constitution.

BACKGROUND

Jane Doe ("Doe") was a student within Riverside School District ("District"). A classmate ("Classmate") sexually assaulted Doe outside of school, and a juvenile court found Classmate guilty of the assault, adjudicating him delinquent. Doe and her family subsequently filed a complaint against the District (the "Complaint") alleging that following the adjudication the District failed to remove or otherwise separate the Classmate from Doe while the two were at school. The Complaint alleged the family notified the District that Classmate, along with other students and teachers, continually harassed Doe but the District took no action to address the harassment.

The Complaint included claims for discrimination under Title IX of the Education Amendments of 1972 ("Title IX") and claims under 42 U.S.C. § 1983 alleging violation of 14th Amendment Rights of equal protection

and due process. The District filed a motion to dismiss the Complaint and the Court denied the motion in part, finding the allegations by the family, if true, supported claims for discrimination under Title IX and under the equal protection clause of the 14th Amendment of the Constitution.

The Complaint alleged that following the sexual assault and adjudication, Doe's family notified District administration and the District superintendent of the following: 1) Both Doe and Classmate attended a semi-formal dance and Classmate sat at the table next to Doe and harassed her for the entire event, claiming Doe "made the whole thing up;" and 2) Classmate mockingly shouted at Doe in the hallways of the school building. According to the complaint, at the meeting between the family and District administrators, the administrators stated, "Nothing could be done and if [Doe] was having issues, she could move to a different school district."

The Complaint alleged following this meeting, the District took no action to protect Doe from ongoing harassment and took actions that enabled further harassment including:

- 1) Placing Doe and Classmate in the same lunch period, during which Classmate continued to ridicule Doe;
- 2) Placing Doe in a class taught by a teacher who was friends with Classmate's family. This teacher allegedly ridiculed Doe in front of the rest of the class and the District denied Doe's request to transfer out of this class;
- 3) Putting Classmates picture on a banner located on Doe's route to school;
- 4) Threatening to remove friends of Doe from the football team after they spoke up on Doe's behalf.

The Complaint alleged that Doe suffered physical harm, emotional harm, and declining grades due to the harassment and the response by the District.

DISCUSSION

A showing of "deliberate indifference" was the key element to both the Title IX and Equal Protection claims alleged by Doe and her family against the District. The Court held the allegations, if true, were enough to prove deliberate indifference because the District failed to take action to protect Doe from harassment and facilitated a hostile school environment.

Additionally, the Court held the Complaint adequately pled a loss of educational opportunity as part of the Title IX claim, by asserting Doe suffered physical harm, emotional harm, and declining grades due to the harassment and the response by the District.

The Court also held the Complaint adequately pled a *Monell* claim for municipal liability under the equal protection clause of the 14th Amendment, for failure to adequately implement its nondiscrimination policies and to adequately address the complaints of sexual harassment.

PRACTICAL ADVICE

This case underlines the importance of promptly and reasonably addressing allegations of student-on-student harassment. Title IX requires school districts to undertake reasonable measures under the circumstances to prevent ongoing sexual harassment and retaliation.

Independent of a school district's obligations under Title IX, Pennsylvania Act 110 of 2020, provides that if a student enrolled in a public school is convicted or adjudicated delinquent of committing a sexual assault upon another student enrolled in the same public school entity, the public school must undertake one of the following actions: (i) expel the convicted or adjudicated student, (ii) transfer the convicted or adjudicated student to an alternative education program, or (iii) reassign the convicted or adjudicated student to another school or educational program within the public school entity.



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