

SOUTH DAKOTA School Law Notes



JUNE 2015 | INFO@SWIERLAW.COM | WWW.SWIERLAW.COM

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Transgender Issues for South Dakota School Districts

Freedom from discrimination based on sex is a constitutional right. However, when a student's gender identity or gender behavior does not match with his sex at birth, respecting this right can become difficult, especially in the public school setting.

This student is usually referred to as "transgender" or "trans." The issue is complicated because it places a school district in the position of balancing the rights of transgender students with the rights of other students and parents. The problem is further exacerbated because the rights of transgender students are new and developing.

What Does It Mean To Be "Transgender"?

First, "gender identity" refers to a student's inner sense of being male, female, or even something in between these two concepts.

Second, "gender expression" refers to the way a student communicates gender identity through clothing, grooming, hairstyle, or voice.



Third, when a transgender student surgically alters his body, it is generally called "sex/gender reassignment" or "affirmation."

Fourth, students who experience intense, persistent gender contrasts may be diagnosed with "gender identity disorder" (GID). However, a GID diagnosis remains controversial in the mental health community.

It should also be noted that "gender identity" does not equate to sexual preference or orientation. For example, a "transgender girl" (born as a boy by sex) who is attracted to males is categorized as heterosexual, not gay. In fact, a transgender person can have the same sexual

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Transgender continued.

orientation as anyone else - straight, gay, bi-sexual, or asexual.

At the federal level, there are no explicit legal protections for transgender students.

Title IX of the Education Amendments of 1972 (Title IX) addresses discrimination on the basis of sex in schools receiving federal funding. However, although Title IX does not specifically prohibit discrimination on the basis of sexual orientation, gender identity or gender expression, it has been used to address sexual or gender-based

harassment in schools based on gender stereotypes. The Office for Civil Rights (OCR) of the U.S. Department of Education's Revised Sexual Harassment Guidance states, "gender-based harassment . . . is also a form of sex discrimination to which a school must respond."

Recently, claims under the First Amendment and the Fourteenth Amendment have been made in gender identity cases. In 2000, a Massachusetts court found that a transgender student had the First Amendment right to wear clothes consistent with her gender identity and a due process interest

in her personal appearance.

Today, approximately twenty states have some type of protections for transgender persons on the basis of gender identity or expression. Therefore, transgender people in the majority of states have no specific legal protections based on their gender identity.

For additional information regarding transgender issues, see the National School Boards Association article "Which Way to the Restroom? Respecting the Rights of Transgender Youth in the School System."



Q: In South Dakota, can a student that is suspended in one school district enroll in another school district before the suspension has expired?

A: **No.** Under South Dakota law, if a student is under suspension or expulsion in a school district, the student cannot enroll in any school district until the suspension or expulsion has expired.

Q: Can a South Dakota school district use email to contact parents or guardians?

A: **Yes.** Under South Dakota law, the parent or guardian of any student enrolled in a public school can choose to receive any notifications or correspondence from that school by electronic mail instead of regular mail if the parent or guardian provides to the school an electronic mail address to which the notifications or correspondence may be sent.



Swier Law Firm Awards Scholarships to Avon High School Seniors

Swier Law Firm has honored four Avon High School graduates with its "Future Leaders" Scholarship. The law firm presented the scholarships to the recipients at Avon High School's graduation ceremonies on May 17, 2015.



"Our law firm is incredibly excited to have the opportunity to encourage students in Avon to pursue higher education," said Scott Swier. "Avon is a community that takes immense pride in helping our school and students achieve their goals. As our law firm thought about ways to give back to the community, a scholarship program seemed to be a great way to recognize our high school students for their hard work and provide an opportunity for future success. Each of these students are really good kids and very deserving of this honor."

This year's recipients:

Evianna Blaha
 Randi Hento
 Joshua Knodel
 Devin Tolsma

The scholarships are awarded each year and the selection process is based on academic and extra curricular involvement, school and community service, financial need, a commitment to excellence, and a clear plan for future success.

This year's recipients are Evianna Blaha, Randi Hento, Joshua Knodel, and Devin Tolsma.



Scott Swier



Brooke Schloss



Robert Burns



Jake Fischer



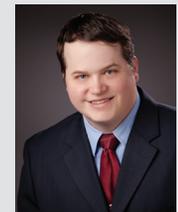
Michael Henderson



Chris McClure



Amanda Work



Bill Blewett

SWIER LAW FIRM, PROF. LLC

AVON OFFICE

202 N. Main Street, P.O. Box 256
 Avon, SD 57315

p: (605) 286-3218 | f: (605) 286-3219
 toll free: (888) 864-9981

CORSICA OFFICE

240 E. Main Street
 Corsica, SD 57328

p: (605) 286-3218 | f: (605) 286-3219
 toll free: (888) 864-9981

SIoux FALLS OFFICE

5024 W. Bur Oak Place, Suite 214
 Sioux Falls, SD 57108

p: (605) 275-5669 | f: (605) 286-3219
 toll free: (888) 864-9981

WINNER OFFICE

142 E. 3rd Street
 Winner, SD 57580

p: (605) 842-3373 | f: (605) 842-3375
 toll free: (888) 864-9981

info@swierlaw.com | www.swierlaw.com