

# SOUTH DAKOTA School Law Notes



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## **Q:** What role does the South Dakota Constitution play in public education?

**A:** Article VIII, Section 1 of the South Dakota Constitution emphasizes the importance of a “general and uniform system of public schools” and places the duty to establish the system on the State Legislature:

The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

The Legislature also has the duty to fund education. Article VIII, Section 15 of the South Dakota Constitution directs the Legislature to provide through general and local taxation as follows:

The Legislature shall make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state.





## Office of Civil Rights Finds Title IX Violation for School District's Prohibition of Transgender Student's Use of Locker Room

On November 2, 2015, the U.S. Department of Education's Office for Civil Rights ("OCR") concluded that an Illinois public school district violated Title IX by prohibiting a transgender high school student from using the locker room consistent with her gender identity and by conditioning the student's use of that locker room on her use of a privacy curtain or a private stall.

### FACTS

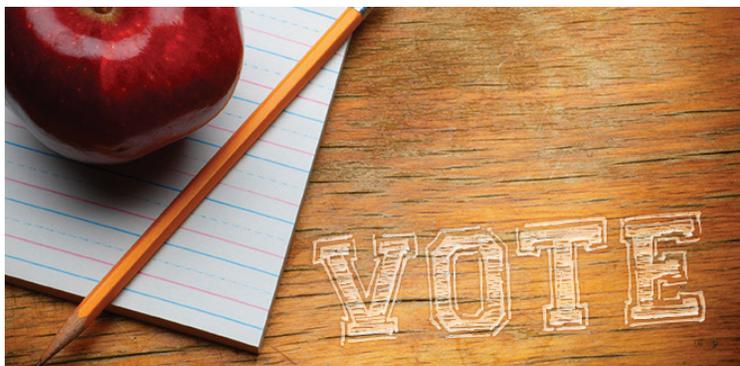
In Township High School District 211 (OCR Case No. 05-14-1055), a student who has consistently identified as a female filed a complaint with OCR when the school district did not allow her access to the female locker rooms for physical education classes and athletics. Rather, the school district provided the student with separate, private changing facilities.

In defending its decision, the school district cited other students' privacy interests. Specifically, the school district based its decision on its concerns that "expos[ing] female students to being observed in a state of undress by biologically male individual" and that "[g]ranted [the transgender student] the option to change her clothes in the girls' locker room would expose female students as young as fifteen years of age to a biologically male body."

In rejecting the school district's arguments, OCR noted that the school district could have addressed both the transgender student's right to equal access to the locker rooms and the potential privacy concerns of other students by providing a sufficient number of privacy curtains for any student to use if they desired privacy.

OCR's findings and conclusions also provide guidance to public school districts as to how OCR will interpret transgender students' rights under Title IX to access locker room and changing facilities consistent with their gender identity and OCR's opinion regarding reasonable steps schools can take to address these issues.

It should be noted that the OCR's decision conflicts with a recent decision from Virginia. In *Grimm v. Gloucester County School Board*, a federal district court found that a school district did not violate Title IX by prohibiting a male transgender student from using the male restroom. The court based its ruling on a Title IX regulation that provides that entities may provide separate toilet, locker room, and shower facilities on the basis of sex if those separate facilities are comparable. The *Grimm* case is currently on appeal.



**Q:** In South Dakota, are school board elections partisan or non-partisan?

**A:** In South Dakota, school board members are elected on a non-partisan basis.

**Q:** When does a newly elected school board member take office?

**A:** In South Dakota, a newly elected school board member takes his or her office at the annual July meeting of the school board.

**Q:** Is a school district required to obtain criminal background investigations of its prospective employees?

**A: Yes.** In South Dakota, any person over eighteen years of age hired by a school district must submit to a criminal background investigation.



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