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Via Email: josh@joshbrownesq.com

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Re: Your Request to Hilliard City Schools

Mr. Brown:

Our office serves as legal counsel to Hilliard City Schools. Superintendent Stewart asked that I respond to your recent correspondence of August 15, 2022 wherein you indicate you represent parents with questions regarding student gender identity as it is addressed at the District. Your letter asks the question of whether the school will “require school officials to notify parents when their child manifests symptoms of gender dysphoria (or symptoms of anything else) at school, and what specific exceptions may apply.”

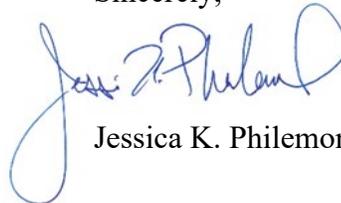
As an initial matter, the District’s goal is to include parents in all aspects of a child’s education. Your question asks for something different, however. Without going back and forth about who can assess “symptoms,” and what that undefined term may mean to you or the parents you represent, it appears your question is really – if a student identifies at school as a gender different than their birth gender, will the school discuss this with the parents? The answer is “probably.” Schools stand *in loco parentis*, meaning in place of parents, for students who attend school. While parents generally have rights regarding the upbringing of their children, schools and educators have an obligation to act in the student’s best interest when the student is at school. School districts also must comply with state and federal anti-discrimination and privacy laws that protect students. The default expectation is to include parents with regard to gender identity matters because the District’s position is that is generally in the student’s best interest, but that will not always be the case. For example, there may be a health or safety concern at issue. There also may be confidentiality issues involved because a student’s conversations with a school counselor are almost always privileged under Ohio law. With regard to school counseling and health care, when students are referred to mental or other health care professionals, the District complies with the notice and consent requirements as set forth in Ohio law. Generally, consent for healthcare referrals or treatment must be clarified as part of a child’s emergency medical authorization form. See [Board Policy JHC, Student Health Services and Requirements](#).

Your letter also suggested that a recent court decision issued by the United States District Court for the Eastern District of Tennessee (the “Tennessee Case”) applies to transgender student rights in the education setting. We are familiar with that case, but I believe your interpretation is a bit misplaced because that case did not consider the substantive question regarding Title IX’s application and did not change the controlling law under Title IX in our jurisdiction. The Tennessee Case involved a challenge, among other things, to the United States Department of Education (“DOE”) guidance regarding school districts’ obligations not to discriminate against, and to accommodate, transgender students. On July 15, 2022, the United States District Court for the Eastern District of Tennessee granted a preliminary injunction barring DOE from enforcing this guidance in certain states, including Ohio. As the court explained, the basis for the injunction was strictly procedural. The court held that DOE’s guidance was not proper because DOE failed to comply with required administrative notice and comment procedures. Importantly, the court expressly refrained from determining whether DOE’s guidance regarding transgender students was or was not “substantively lawful.” In other words, the Tennessee Case did not reject DOE’s substantive position that discrimination on the basis of sexual orientation or gender identity is a violation of Title IX and other federal laws.

While the Tennessee court barred DOE from enforcing the challenged guidance in certain states, it did not change the controlling body of law in our jurisdiction that holds that Title IX and the United States Constitution prohibits discrimination on the basis of sexual orientation and gender identity. Nor did it change the numerous court opinions, including those issued by courts with jurisdiction over Ohio, that require school districts to provide accommodations to transgender students and to treat them as the gender with which they identify. *See Bd. of Edn. of the Highland Local Sch. Dist. v. United States Dept. of Edn.*, 208 F. Supp. 3d 850 (S.D. Ohio 2016); *Bd. of Edn. of the Highland Local Sch. Dist. v. United States Dept. of Edn.*, 2016 WL 6125403 (S.D. Ohio 2016); *Dodds v. United States Dept. of Edn.*, 845 F.3d 217 (6th Cir. 2016). The District and its administration is fully aware of the above and will continue to apply the controlling law, including as it may evolve over time, throughout its educational program.

I hope this information has helped to resolve any concerns your clients may have regarding the District’s academic program. If you have further questions or would like to discuss, you may reach out to me directly.

Sincerely,



Jessica K. Philemond

Cc: David Stewart, Superintendent