



## *WHAT SPECIAL EDUCATORS SHOULD BE TEACHING ALL OF US*

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# *What Every Educator of Special Needs Students Knows*

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No Matter the Label, Every Individual is Different and Needs A Different Plan

As Soon As It Appears that One Formula (Program) Will Work, It Doesn't

Not Following Procedures and Rules Have Consequences

There Are No Rules

# FEDERAL COURTS





*Adams v. School Board of  
St. Johns County, Fla  
(Florida Federal District  
Court)*

"Everyone agrees that boys should use the boys' restroom at Nease and that girls should use the girls' restroom. The parties disagree over whether Drew Adams is a boy."



# *Status of Title IX Transgender Cases*

Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla.

Transgender student, who identified as male and had transitioned **legally, socially and medically**, brought 1983 action against school district, alleging that his rights under the Equal Protection Clause and Title IX were violated when he was not allowed to use the boys' bathroom at county high school.



# *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla., (11th Cir., en banc, 7-4, December 30, 2022)*

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"For purposes of this policy, the School Board distinguishes between boys and girls on the basis of biological sex— which the School Board determines by reference to various documents, including birth certificates, that students submit when they first enroll in the School District."

"Under the Best Practices Guidelines, School District personnel, upon request, address students consistent with their gender identity pronouns. The guidelines also allow transgender students to dress in accordance with their gender identities and publicly express their gender identities. Finally, the guidelines formally note that: "Transgender students will be given access to a gender-neutral restroom and will not be required to use the restroom corresponding to their biological sex."

# *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla., 12/30/22*

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“Regardless of Adams’s genuinely held belief about gender identity—which is not at issue—Adams’s challenge to the bathroom policy revolves around whether Adams, who was ‘determined solely by the accident of birth’ to be a biological female—is allowed access to bathrooms reserved for those who were ‘determined solely by the accident of birth’ to be biologically male.”

# *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla., 12/30/22*

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"Further ... equating "sex" to "gender identity" or "transgender status" under Title IX, as Adams would have us do as a matter of statutory interpretation, would touch upon the interests of all Americans—not just Adams—who are students, as well as their parents or guardians, at institutions subject to the statute."

"...the bathroom policy facially classifies based on biological sex—not transgender status or gender identity."



# *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla., (11<sup>th</sup> Cir. 12/30/22)*

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Dissenting opinion:

".... recall that Adams's entire lawsuit depends upon the existence of sex-separated bathrooms. Adams sought only to be treated like any other boy. He asked for, and the district court awarded, an injunction that prevented the School District from barring Adams from the boys' bathroom, not from having sex-separated bathrooms. The majority opinion employs stereotypic ideas and assumptions in an attempt to persuade readers that admitting transgender students into the bathrooms corresponding with their consistent, persistent, and insistent biological gender identity will result in the elimination of sex-separated bathroom facilities. This is simply not so."



*New  
Regulations Will  
Address LGBTQ  
Students*



**U.S. Department of Justice**  
**Civil Rights Division**

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*Principal Deputy Assistant Attorney General*  
*950 Pennsylvania Ave, NW - RFK*  
*Washington, DC 20530*

**MEMORANDUM**

March 26, 2021

**TO:** Federal Agency Civil Rights Directors and General Counsels

**FROM:** Principal Deputy Assistant Attorney General Pamela S. Karlan  
Civil Rights Division

**SUBJECT:** Application of *Bostock v. Clayton County* to Title IX of the Education  
Amendments of 1972

PSK

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Several federal agencies have recently contacted the Civil Rights Division with questions regarding the application of the Supreme Court's reasoning in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. \_\_\_\_ (2020), to Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681 *et seq.*) (Title IX), particularly in light of Executive Order 13988, *Preventing*



U.S. Department of Justice  
Civil Rights Division

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Principal Deputy Assistant Attorney General  
950 Pennsylvania Ave. NW - RFK  
Washington, DC 20530

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"After considering the text of Title IX, Supreme Court case law, and developing jurisprudence in this area, the [Justice Department's civil rights division] has determined that the best reading of Title IX's prohibition on discrimination 'on the basis of sex' is that it includes discrimination on the basis of gender identity and sexual orientation."

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## *OCR's Latest Guidance:*

Recently, OCR reiterated its position, consistent with the recent notice of interpretation

It "will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities."

Consistent with the Supreme Court's ruling and analysis in Bostock, the Department interprets Title IX's prohibition on discrimination "on the basis of sex" to encompass discrimination on the basis of sexual orientation and gender identity.



3 cases, 11<sup>th</sup> Cir. Ruled that Sexual Orientation Not Protected by Title VII, 2<sup>nd</sup> Cir. Ruled that It Was; 6<sup>th</sup> Cir. Ruled that Gender Identity Was Protected

"Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII."

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***Bostock v.  
Clayton  
County, Ga  
(USSC,  
2020)***

# ***LANGE V. HOUSTON COUNTY, GA. M.D.Ga. 2022***

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Twenty-five-year law enforcement veteran, the past fifteen of which have been with the Houston County Sheriff's Office

Exceptional employee who "has performed her duties as an investigator very well" throughout her tenure as a sheriff's deputy

Transgender woman

Began transition in 2017, now lives "fully and consistently" as a woman.

Medical treatment includes hormone treatments and top surgery, now wants bottom surgery

# *Lange v. Houston County, cont'd*

Sheriff also sued

When told by Lange and Supervisor, Sheriff asked Supervisor "What the hell is he talking about?"

Thought it was joke at first and then told Lange he didn't believe in sex changes

Although finally approving dress request, told Lange that she would have to have "tough skin" and told a larger group that she had "big balls" to do what she was doing

Purpose of coming out was to get health insurance to pay for surgery, which was denied

## *Lange v. Houston County – District Court*

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In short, the defendants can't find a Bostock workaround. That is understandable. The Exclusion plainly discriminates because of transgender status. Accordingly, Lange's motion for summary judgment on Title VII grounds is granted as to County.

As to 14<sup>th</sup> A., "The fact of the matter is... that the plan pays for mastectomies when medically necessary for cancer treatment but not when mastectomies are medically necessary for sex change surgery. And the plan pays for hormone replacement therapy medically necessary for the treatment of menopause, but not hormone replacement therapy medically necessary for 'sex change.' The undisputed, ultimate point is that the Exclusion applies only to transgender members, and it applies to Lange because she is transgender."





**Transgender Students: What Team Am I On?**





# *Transgender Students, Athletics and Title IX*

Connecticut Association Rule Allows  
Transgender High School Students To Compete  
on Teams of Their Gender Identity

In a Letter of Enforcement, Trump/Devos OCR  
Stated "permitting the participation of  
biologically male students in girls interscholastic  
track denied female student-athletes benefits  
and opportunities."

Biden/Cardona DOE Withdrew Enforcement  
Action, but Lawsuit by Cisgender Girls

2<sup>nd</sup> Cir. Agreed that plaintiffs lacked standing to  
bring suit as they won some meets

Court notes that interpretation "fluctuates" with  
administrations and then relies on Bostock and  
decisions from other circuits (Soule v. CAS)




# *Transgender Students, Athletics and Title IX*

District court in Idaho found state law banning transgender girls from participating in girls' athletics unconstitutional;

Appeal pending in 9th Circuit, remanded to determine mootness

Georgia General Assembly Passed HB 1084

Specific Regulations on Athletics Expected from USDOE after Title IX Harassment Regulations Are Final



## *GHSA – New Rule*

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"A student's sex is determined by the sex noted on his/her certificate at birth"



## *Owens v. State of Georgia, GOSA (11<sup>th</sup> Cir. 2022)*

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First, our caselaw and the statutory text establish that an employee **must identify her disability before an employer is obligated to engage in an interactive process** about accommodating that disability.

In most cases, to identify a disability, an employee **must provide at least some information about how a physical or mental condition limits her functioning.**

Second, we believe an employee must provide her employer **enough information to assess how her proposed accommodation would help her overcome her disability's limitations.**

# *L.E. v Superintendent of Cobb County School District (11<sup>th</sup> Cir. 2022)*

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“The Students’ claim is **not moot** because their prayer for relief seeks an order requiring CCSD to comply with CDC guidelines for COVID-19 precautions in schools. The CDC guidance recommends that schools ‘must make reasonable modifications or accommodations when necessary to ensure that all students, including those with disabilities, are able to access in person learning’—recommendations the Students allege that CCSD continues to ignore. ... Additionally, the district court abused its discretion in redefining the scope of the program for which the Students are seeking accommodations and failing to consider the Students’ **unjustified isolation theory**. Accordingly, we REVERSE and REMAND for analysis under the correct scope: access to the benefits provided by in-person schooling.”



# *L.E. v Superintendent of Cobb County School District (11<sup>th</sup> Cir. 2022)*

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“The Students [with respiratory issues] allege that CCSD refuses to consider reasonable accommodations to allow them **access to in-person classes, not just education generally**. The district court did not consider whether virtual schooling can constitute a reasonable accommodation to provide the benefits of in-person schooling. The district court stopped short of the operative question, instead deciding that ‘[s]o long as Plaintiffs are offered meaningful access to education—and the Court finds that they have been—Defendants have adequately accommodated Plaintiffs .’”

# *Perez v. Sturgis Public Schools, (6<sup>th</sup> Cir. 2021) cert. accepted 2022*

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23-year-old deaf student, thought he would graduate but learned at last minute would only get certificate of completion

Filed due process hearing request, but settled before hearing

Subsequently filed suit in district court which dismissed for failure to exhaust administrative remedies

Appeal to 6<sup>th</sup> Cir: "The crux of Perez's complaint is that he was denied an adequate education." Upheld dismissal by trial court.

How does *Fry v. Napoleon Community Schools* apply?

# *Perez v. Sturgis Public Schools, (oral argument before USSC)*

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Most Justices Seemed to Agree that Parents Had Done Everything Possible Under IDEA by Accepting Full Relief Available in Settlement

Question About the Nature of the Settlement and Why Other Claims Were Not Released

Clear That Decision for the District Would Result in No Damages for the Parents/Student

Most Court-watchers Think that Parents Will Win





# *Section 504*



# *New 504 Regulations...*

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May 6, 2022 Press Release

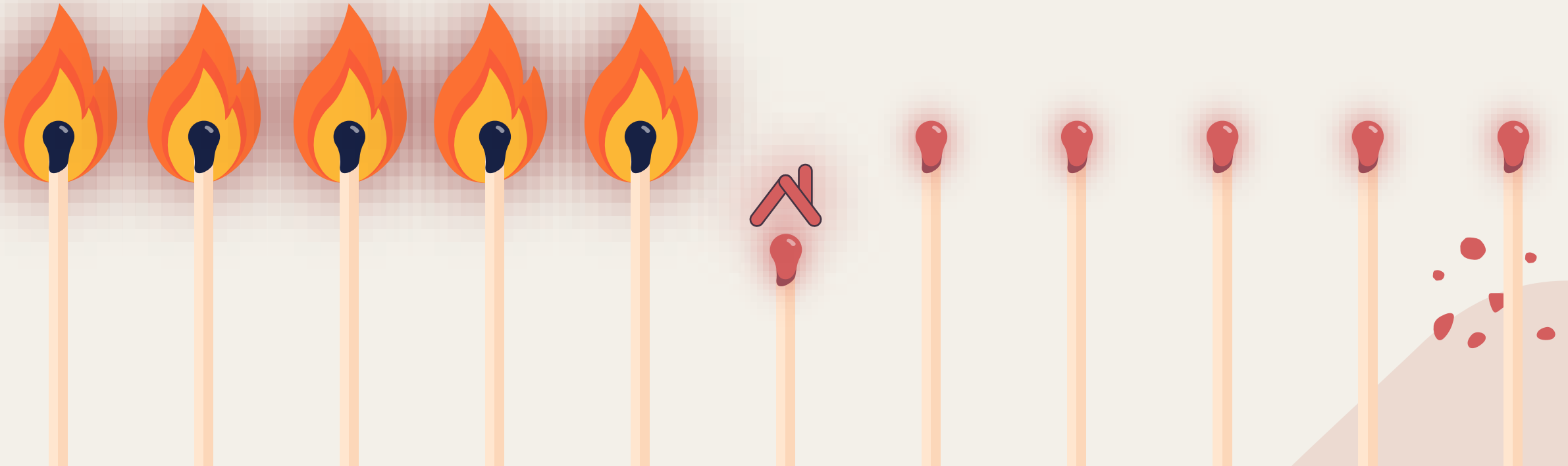
"The Department's Office for Civil Rights will solicit public comments to help decide how best to improve current regulations to assist America's students with disabilities."

"While the world has undergone enormous changes since 1977, the Department's Section 504 regulations have remained, with few exceptions, unaltered," said Assistant Secretary for Civil Rights Catherine E. Lhamon. "As we observe the 45th anniversary of these important regulations this month, it is time to start the process of updating them. Just as in 1977, the voices of people with disabilities must be heard and incorporated as we engage in that work."

**The 2023 Session of**  
**The General Assembly**  
**Under the Gold Dome**



# ARE THERE MORE CULTURAL ISSUES FOR SCHOOLS ON THE WAY?



*Cross Over Day*

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*Georgia Promise  
Scholarship*

*Georgia  
Educational  
Freedom Act*

**YES!**  
**TO PUBLIC SCHOOLS**

**NO!**  
**TO VOUCHERS**

## *What Else is Hard to Predict?*

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SB 4 - Blind Persons' Braille Literacy Rights and Education Act

HB 340 regarding daily duty-free planning periods for K-12 teachers

HB 282 regarding the GaDOE providing career readiness education materials for students in grades six through twelve



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**BELIEVE IN PUBLIC  
EDUCATION**



