

## Judge Rules for Student in Transgender Dress Case

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BROCKTON ENTERPRISE

October 12, 2000

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BROCKTON - A transgender male eighth-grader may return to South Junior High School in girls' clothing, despite the School Department's objections, after a Superior Court judge on Wednesday granted a preliminary injunction on behalf of the student in the first case of its kind in the nation.

Judge Linda E. Giles ordered School Department administrators not to prevent the 15-year-old student, identified in court papers only as "Pat Doe," from wearing any clothing or accessories that any other male or female student could wear to school without being disciplined."

Giles rejected arguments by School Department officials that having a boy dressed as a girl is disruptive and the student is threatened by other students who reject that type of behavior.

Attorney Jennifer Levi, who represents the teen-ager, praised Wednesday's ruling, but said no decision has been made yet on when the youth will return to school. She will first consult with the youth and the youth's grandparents, who are the guardians.

Public school disciplinary measures targeting transgender students is "prohibited sexual discrimination," said Levi. "This is the first case of its kind in the country recognizing that."

Levi said there is no other case on file of a transgender individual trying to gain access to public education under his or her perceived gender identity.

Mayor John T. Yunits Jr., who chairs the School Committee, said he and the court do not see "eye to eye on the subject" and vowed the city will appeal the decision to the Massachusetts Court of Appeals.

The mayor was set to meet with the city's attorney, Edward Lenox of Murphy, Hesse, Toomey & Lehane, this morning to discuss strategy.

The case is being monitored by school departments across the country that are faced with similar situations.

Lenox said that while "it is a very important case ... to truly be precedent setting it needs to be a decision by a (state or federal) appellate court."

The teen-ager was repeatedly sent home from South Junior High School during the last school year for wearing dresses, wigs, padded bras, make-up and other female attire that administrators deemed provocative or a distraction to other students.

School administrators allowed the student to wear some modest female or gender-neutral attire.

However, Pat Doe has been in a home schooling program since the beginning of the current school year. School administrators on Sept. 1 told the student that Doe could no longer attend school in any female attire.

The suit was filed two weeks ago on behalf of the student by the student's grandmother, "Jane Doe," with Levi of the Gay and Lesbian Advocates and Defenders of Boston providing the legal representation.

In the 16-page ruling, Giles wrote that Brockton officials did not prove that granting the injunction would harm the public interest and Pat Doe's presence would instead be a lesson in tolerance to other pupils.

"This court trusts that exposing children to diversity at an early age serves the important social goals of increasing their ability to tolerate such differences and teaching them respect for everyone's unique personal experience in that 'Brave New World' out there," Giles wrote.

Yunits said the student's attire was a distraction to other students.

"We have certain dress codes throughout the system that are meant to maintain order and discipline," Yunits said.

The student was suspended three times last year for using the ladies room after being warned not to and missed enough school that the teen-ager had to repeat eighth grade this year.

School officials have had to break-up at least two confrontations between Pat Doe and male students offended by flirtatious or suggestive behavior toward them.

Judge Giles said the school can "punish conduct that would be deemed offensive if committed by any

student, such as harassing, threatening or obscene behavior."

The judge also pointed out that the school can ban clothing that would be inappropriate if worn by any student, such as a theatrical costume.

The school is not doing this in this case, Giles argued.

"The school is barring her from school on account of the expression of her very identity," the judge said.

The judge said the School Department has placed restrictions on Pat Doe's dress "that may not be placed on other female students."

The personal safety of the student remains an issue for the mayor and school officials.

"We would hope the kids would not harm him. However, there are certainly emotional realities when dealing with kids this age," Yunits said. "One would hope the guardians of the student would take that into consideration."

Levi called that response "classic discrimination."

"They target the student as the problem," Levi said, "rather than providing a safe educational environment for all students."

Pat Doe has been diagnosed with gender identity disorder, which means that although equipped with male genitalia, Pat Doe has a female gender identity. Throughout the ruling, the judge referred to Pat Doe as "she."

Giles wrote that Pat Doe's "ability to express herself and her gender identity through dress is important to her health and well-being, as attested to by her treating therapist."

The judge also determined that Pat Doe's expression of herself through feminine attire "is not merely a personal preference, but a necessary symbol of her identity."

The case has progressed "fast and furiously and that's part of the problem," attorney Lenox said, discussing this initial loss by the city in court. "The whole process has been compacted, and we really

have not had the opportunity to go through all stages of discovery and preparation."

Ward 5 School Committee member Dennis Eaniri said he worries more about the social precedent the outcome will have on students than the legal precedent.

"What does it mean for the other students? Some may want to do it just for the fun of it, 'Let's challenge that, let's see who looks better in the black blouse, me or Johnny,'" Eaniri said. "It could turn into a little bit of a trick or treat."

Ward 4 School Committee member Mary Gill, whose district encompasses South Junior High School, said she does not think Pat Doe realizes the media frenzy and legal debate unleashed by the case.

"I don't think he has a clue how this is going to play out ... we could have Channel 5 and 7 and Fox and people from all over the place at that school," Gill said.

And Gill also worries about the reception Pat Doe will get from other students.

"I feel bad for this boy. Junior high school is the worst of all the school years. Kids are so rotten to kids who dress regular and for this boy to come in dressed like that, it's like putting a target on his back," she said.

The judge said in her ruling that she cannot accept arguments like this on behalf of the School Department's actions, since it "would grant those contentious students a 'heckler's veto.'"

"Other people's discomfort has never been a ground for allowing discrimination," said Levi. "If that were the case, the hecklers would get a unilateral veto. The courts have consistently rejected this argument."

Levi said that almost any minority with strongly perceived differences could be discriminated against with this argument.

"That is not a system we would want to have," she said.