

Maine Human Rights Commission Rules in Favor of Transgender Child

July 1, 2009

By Abigail Curtis

BDN Staff

AUGUSTA, Maine — The Maine Human Rights Commission ruled Monday that the Orono School Department discriminated against a transgender child by denying her access to the girls bathroom.

While the school department's lawyer warned that schools around the state may not be ready to manage the practical fallout from the decision, civil liberties advocates hailed the ruling as an advancement of human rights.

"This ruling is a huge step forward for a vulnerable population that is entitled to the full protection of the law," said Zachary Heiden, legal director of the Maine Civil Liberties Union. "There will always be voices who claim we're not ready, we're not there yet, the time to end discrimination is next year, or next session. But victims of discrimination should not have to wait."

The attorney for the child and her parents said his clients are very happy with the outcome of their complaint. "At the very heart of it is the issue of basic human dignity and fundamental civil liberties," said Eric Mehnert. "It was a good decision."

But Melissa Hewey, attorney for the Orono School Department, said the ruling was "a huge leap." "I'm not sure that it takes into account practicalities that face educators around the state," she said. "You can understand [the ruling] intellectually. You can agree with it intellectually. But practice is sometimes different — and I think that's what may have escaped some people in this case."

The discrimination in question first occurred in October 2007 when the child was in the fifth grade at Asa Adams School. Until then, she was allowed to use the girls' bathroom, although she was biologically male. But that fall, the transgender child was followed into the girls room by a male student who had "previously started to harass her by stalking her and calling her 'faggot,'" according to the Maine Human Rights Commission investigator's report.

After the second such episode, the boy was suspended and removed from the transgender child's class. At that point, school officials told the transgender child that she had to use a single-stall faculty bathroom at the other end of the school, and that was when her parents decided to take the matter to the Maine Human Rights Commission.

Paul Melanson, grandfather of the boy accused of harassing the transgender student, also filed a complaint with the Maine Human Rights Commission, saying that not allowing his grandson to use the girls bathroom or the faculty bathroom as the other child did was a violation of his grandson's right to public accommodation under the Maine Human Rights Act. Melanson had given his grandson permission to use the girls bathroom as long as the transgender student was doing so, according to the report.

Enough is enough, an irate Melanson said Monday of the commission's ruling. "It ticks me right off that you're letting a kid run the whole system," he said. Melanson is now trying to inspire Maine moms to protest the decision, which he thinks is wrong — and unfair to both boys and girls. "Little boys do

not belong in the little girls room, and vice versa,” he said. “This isn’t just about my kid. A lot of children have come up to me and said that this isn’t right.”

On Monday, the commission found that Asa Adams School did not unlawfully discriminate against Melanson’s grandson “because of his sexual orientation,” which is a heterosexual male.

“Minor Student 2 was disciplined because his biological sex is male and his gender identity is male and he used the girls’ bathroom,” the investigator’s report said.

Hewey said the commission made the right decision in this case. “You can hope that most people won’t use their children as pawns to make political statements,” she said.

Patricia Ryan, executive director of the Maine Human Rights Commission, said this decision is among the first to involve schools, sexual orientation provision, gender identity and the issues of bathroom use. She said schools in Maine likely will want to take a look at it.

It was the commission’s second ruling in two months on transgender people and public restroom use. On May 18, the commission found that a transgender woman was discriminated against at a Denny’s restaurant in Auburn when management would not let her use the ladies room until she had sex reassignment surgery.

“Every time you get new jurisdiction, the first decisions that are made are always new,” Ryan said. “They’re always in areas in which the courts have not had the opportunities to develop case law.”

According to Mehnert, his clients wanted to bring the case in part because the parents’ previously “wonderful” relationship with school officials over their child’s public accommodation had broken down.

“The message that was sent from the superintendent said that it is OK to segregate this child, it is OK to ostracize this child,” Mehnert said. “I think [the parents’] biggest challenge is their fear — it’s a very real fear — that the Orono school system has told them that they don’t think they can protect the child.”

Because the child started identifying as a girl at a very young age, the parents had worked with school officials to have a plan for “reasonable accommodation,” Mehnert said. But when the fifth-grade incidents happened, the school moved to resolve the situation with “no interactive conversation,” he said.

Hewey said school officials had the child’s interests in mind. “Not only did they provide accommodation, a separate bathroom, that was the bathroom that the student’s health care practitioner recommended,” she said.

Mehnert said his clients had hoped to look at the fifth-grade incidents as an opportunity for education rather than a problem. “They felt that the school could be a leader in what everyone sees as a very complex issue, and they were rebuffed,” he said.

The Maine Human Rights Commission is the state agency charged with the responsibility of enforcing Maine’s anti-discrimination laws. It attempts to resolve complaints of discrimination to the mutual satisfaction of those who are involved, according to its Web site.