Jennifer Levi, director of the Boston-based GLBTQ Legal Advocates and Defender’s (GLAD) Transgender Rights Project and a law professor at Western New England University, has fought for equal rights for the transgender community for decades. In 2014, she won a landmark case in Maine that allowed a transgender girl to use the girls’ restroom at her public school. Trial spoke to Levi about the evolution of transgender rights litigation, how schools can encourage inclusivity, and the steps they can take to protect transgender students.

Interview by || Diane M. Zhang
Photography by || Jane Shauk

Awareness & Acceptance
How did you become involved in fighting for transgender rights?

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I saw that when transgender people were involved in break-ups, often divorces, they faced a tremendous amount of bias and stigma in the judicial system and beyond. People would often use societal discrimination against their former partners, who were transgender, during family dissolution. And many transgender parents were willing to negotiate away all kinds of protections they might otherwise have had in a divorce proceeding to preserve any relationship with their children. At the time, there were really no family law attorneys I knew of who had any expertise in representing transgender clients.

How did you get involved with GLAD?

I knew about and followed GLAD’s work before I went to law school. I even brought a GLAD attorney to Chicago to speak at my law school while I was a student. When GLAD finally raised sufficient funds to increase its legal staff from two to three full-time attorneys, I applied—and was thrilled to get the job.

What does GLAD’s Transgender Rights Project hope to accomplish?

The Transgender Rights Project seeks to end discrimination on the basis of gender identity and gender expression. We focus on bringing legal cases of first impression that establish rights for the transgender community.

There’s still a lack of understanding about what “transgender” means, and that can cause painful experiences. What are some common misperceptions?

Someone who is assigned the sex of female at birth and goes through the process of transition to live as a female is a woman. That really is central to understanding transgender issues. Misperceptions are often about the legitimacy of that identity and the reality of it, and there are also misconceptions that somebody has to go through a specific medical process or disclose private information about themselves before they can be fully regarded as the sex that they are.

Have the legal claims evolved over the past few decades?

There is a lot of visibility around bathroom access cases right now, but they just highlight an underlying issue of major concern to the community, which is whether transgender people will be allowed full and nondiscriminatory use of all kinds of public services. Being able to use bathrooms is fundamentally about whether a student will be allowed to attend school—that’s the issue. Other cases often involve being denied access to health care, being turned away from public services, being turned away from homeless shelters, being excluded from schools, being fired from jobs, and being mistreated in hospitals.

Legal claims on behalf of transgender people facing discrimination have changed, in part, as states such as Connecticut, Maine, and Massachusetts have passed laws guaranteeing equal treatment for transgender people. That’s been really important in terms of broadening the claims available for them.

Insurance coverage for gender-transition-related care, which is essential medical care for transgender people, is also more available in both public and private insurance plans. It used to be that almost no insurance would cover gender-transition-related care. That’s no longer the case. There’s a lot more work to do, but we have a much stronger foundation upon which to build.

What are some challenges transgender students face?

A major challenge for transgender students is when school administrators question the legitimacy of their identity. We get calls from students and their parents telling us that administrators are treating a child who has transitioned—who is fully living in his or her community, for example, as a boy—like somebody other than the boy he is. When someone’s fundamental identity is being questioned daily, it would disrupt anybody’s ability to be at school.

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You sometimes represent children who have been through extremely difficult situations—discrimination, bullying, depression. How do you approach your relationships with your younger clients so they feel comfortable opening up to you?

I find that young people are pretty forthcoming in talking about their experiences with me, in part because of the work that I’ve done, and in part because of my openness to listening to them and helping them negotiate solutions. They need to have a certain level of trust that the information they share isn’t going to be used against them. If they have that, I find it’s not that hard to develop a positive working relationship. It’s important to be respectful, to ask questions only when the questions relate to the legal work that I intend to do, to let them control the terms for sharing their experience, and yet to also dig more deeply to really understand it.

A few years ago you were involved in a landmark case in Maine, where you won a student access to the girls’ bathroom in her middle school. Can you talk about the case and its significance?

I represented a transgender student—now a young woman and in college—who faced challenges at her public school when she was in fifth grade. From very early in her life, despite being identified as male when she was born (and having an identical twin brother), she let her parents know that she was a girl. It took some time for her parents to really understand that experience, but they eventually did and they supported her. When she went through...
the process of transitioning at school, she was initially supported by the school and treated in every way like a girl.

But at one point, another student’s grandfather instructed him to follow my client into the girls’ bathroom. He did that several times, and the school disciplined him, but they also barred my client from using the girls’ restroom that every other girl at the school was allowed to use. And when they did that, it really changed the entire climate for her at school. She had been friends with other girls, but she started to face harassment and mistreatment when she was singled out and made to use a different restroom.

We brought a claim on her behalf under the state nondiscrimination law, and the case went all the way up to the Maine Supreme Judicial Court, which ruled in her favor and said that the state nondiscrimination law requires schools to treat a transgender girl as a girl for all purposes—and that included giving her access to the girls’ student restroom. ¹ This was a huge decision, the first of its kind, in which a transgender student received full protections in school. It has, I believe, been a strong influence in the positive trend in federal court decisions brought by transgender students under Title IX.

The Trump administration has rolled back Obama-era guidance that protected transgender students. Could you explain those protections?
The U.S. Department of Education and the U.S. Department of Justice had, under the Obama administration, issued guidance to public schools clarifying that Title IX requires that transgender students be treated in ways consistent with their asserted sex. That meant, of course, that a transgender boy should be given access to the boys’ restroom and treated for all purposes as a boy, and a transgender girl should be given access to the girls’ restroom and treated for all purposes as a girl.

That was important in a couple of different ways. Schools needed this guidance and interpretation of Title IX so they understood how to fully integrate and provide equal educational opportunities to transgender students. Gavin Grimm’s high school in Virginia did not follow that guidance, and his case went up to the U.S. Supreme Court. ² During that appeal, when the case was pending before the Supreme Court, there was a change in administration.

The Trump administration withdrew the guidance but didn’t replace it with anything, and withdrawing the guidance didn’t change Title IX. All it has done is leave schools confused and with open questions about how to address the needs of transgender students. So it’s been very unfortunate as a practical matter, although it didn’t do anything to change the legal obligations schools have under Title IX.

The Fourth Circuit’s decision in Grimm’s case, which held that he had the right to use the boys’ bathroom, was exclusively based on the Department of Education’s interpretation of federal law. And since the basis of that decision was withdrawn, the Supreme Court sent the case back to the Fourth Circuit before it would consider an appeal. Gavin has graduated—so his case has, for practical purposes, gone away.

The Seventh Circuit, in Whitaker v. Kenosha Unified School District, ruled on this question after this guidance was withdrawn. What was its significance?
The ruling, which granted a transgender boy access to the boys’ bathroom at a school in Wisconsin, indicates that withdrawal of the federal guidance does not change the underlying obligations of schools to fully integrate transgender students. The decision confirms that Title IX requires schools to treat a transgender boy like a boy and a transgender girl like a girl. ³ It should be highly influential in other cases.

Do you have general advice or resources for plaintiff attorneys who may be handling similar cases? I would really urge people to look at legal publications from organizations that are working on these issues. There’s GLAD’s website, ⁴ and there are other organizations such as the National Center for Lesbian Rights, Lambda Legal, the National Center for Transgender Equality, and the Williams Institute. These all offer a tremendous amount of helpful resources. ⁵

Jennifer L. Levi can be reached at jlevi@glad.org.

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