

Denny's reverses restroom policy on transgender use

By Judith Meyer, Managing Editor/days

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LEWISTON — The corporate owner of Denny's restaurants in Maine has reversed its restroom policy in an agreement with a transgender customer, and now permits all customers to use restrooms consistent with their gender identities.

The change, according to Gay & Lesbian Advocates & Defenders attorney Janson Wu, "is common sense."

The agreement, reached in March and announced on Monday, is the result of a lawsuit brought by Brianna Freeman against the chain's Auburn restaurant after Freeman was denied access to the women's restroom there.

The agreement was announced jointly by Realty Resources Hospitality, which owns six Denny's restaurants in Maine, and the Boston-based GLAD Transgender Rights Project, which represented Freeman in her civil action.

The new restroom policy applies to all Denny's restaurants in Maine.

In the joint release, Wu said he and others in his organization are "happy to have had the opportunity to work with business leaders to make Maine's business establishments open and welcoming to all potential customers."

For Freeman, the bottom line is, "for me and other transgender patrons is that Denny's has welcomed us to use the restroom that is consistent with how we live our lives."

"That makes good sense," she said. "Any other rule is just not workable for anyone."

Wu declined to talk Monday about other provisions in the settlement agreement, including compensation the restaurant chain may have paid to Freeman, saying "what was most important for Brianna was to use the most appropriate restroom. Not just for herself, but for all transgender individuals."

Freeman has been using the women's restroom at the Auburn restaurant since reaching agreement with Denny's in March, Wu said, and "we haven't heard of any problems, so we're very happy with that."

In 2007, Brianna Freeman — previously Bruce — of Lewiston, was a regular customer of Denny's restaurant. During visits there, she had regularly used the women's bathroom

without objection and had even met with the restaurant manager to explain her situation. But, that October, the manager told her that he'd gotten a complaint that she, a male, had used the women's restroom.

The manager told Freeman that, since she had not yet undergone a transsexual operation and wasn't considered a biological female, she would have to use the men's room in the future.

Freeman, who wears women's clothing, makeup, jewelry and perfume, has said that using the women's bathroom was part of her medically recommended gender transition process.

The first phase of that process is hormone therapy to boost estrogen and block testosterone. The second phase, where she was in her transition when denied access to the bathroom, is assuming the role and lifestyle of a woman. The third phase of her treatment will be a surgical procedure to complete the transgender process.

Freeman filed a complaint with the Maine Human Rights Commission in 2009, claiming the restaurant had discriminated against her based on her sexual orientation. The agency's investigator found reasonable grounds for the basis of the complaint and, when the two sides couldn't reach agreement later that year, Freeman filed suit in Androscoggin County Superior Court.

Last year, Denny's sought to dismiss the case but, in ruling against the restaurant chain, Justice William Brodrick wrote that the Maine Human Rights Act is aimed at preventing discrimination in public accommodation on account of sexual orientation, finding that Freeman had "adequately plead a claim that Denny's prohibited her from using the women's restroom because of her sexual orientation."

Brodrick's ruling cleared the way for the case to proceed to trial, and during the past year attorneys for Denny's and Freeman, including Freeman's local attorney Jeffrey Neil Young of McTeague Higbee in Topsham, worked to negotiate a settlement.

According to Brian Mesley, a spokesman for Rockport-based Realty Resources Hospitality, "we recognize and support Ms. Freeman's gender transition over the past three and a half years."

"Her transition and this lawsuit presented a new issue for us," he said, and "we believe the resolution in this case will work well for all of our customers and preserved the dignity and safety of all."

In addition to the ongoing civil action, during the last legislative session Freeman's case was the subject of testimony against a bill proposed by Rep. Ken Fredette, R-Newport, that would have given schools and businesses authority to make decisions about who should use their restrooms, including denying transgender people from using restrooms based on gender identity.

Last month, members of the House and Senate defeated the measure by an overwhelming margin, as majorities said they believed the bill was discriminatory and might overwhelm businesses with lawsuits.

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