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Court Report

Education Law News You Can Use

March 17, 2025

Eleventh Circuit (AL, FL, GA): Gender Identity Support Plan Meeting Without Parental Notification Does Not "Shock the Conscience"

A 13-year-old Tallahassee middle school student, female at birth, asked to go by "they/them" pronouns and a traditionally male name at school. Although the student's parents did not allow that, they did allow their child to use an initial nickname "J." at school. District officials had developed a Student Support Plan with LGBTQ-related guidance, which instructed staff not to notify parents of desired social transitions. Pursuant to the plan, school staff met privately with the student to discuss a transition without notifying parents, as the student did not affirmatively request parental presence at the meeting. The parents sued the school board and school officials, alleging this private meeting violated their substantive due process and privacy rights under the Fourteenth Amendment to direct the upbringing of their child.

The U.S. Court of Appeals for the Eleventh Circuit affirmed the dismissal of the claim for damages, holding that the school officials' conduct constituted an executive action (as opposed to legislative) and did not meet the "shock-the-conscience" standard for a due process violation. The court reasoned that given that the child was not harmed or forced to do anything, even if the parents felt that the school officials' efforts designed to help their child were misguided or wrong, the fact that school officials acted contrary to the parents' wishes do not "shock the conscience" in a constitutional sense.

Massachusetts Federal Court Grants Emergency Order Blocking Move to Cut Teacher Training Grants

On Feb. 7, 2025, the U.S. Department of Education (ED) terminated all grants under two federal grant programs designed to improve teacher training and address teacher shortages, totaling $600 million in funding. The termination led to immediate disruptions at various districts, including staff layoffs. Eight states (CA, CO, IL, MD, MA, NJ, NY, and WI) sued ED, arguing that the termination was arbitrary and capricious in violation of the Administrative Procedure Act, seeking a temporary restraining order (TRO) to restore the funding. The U.S. District Court for the District of Massachusetts granted the TRO and ordered immediate restoration of the funding. The court found that ED failed to provide a reasoned explanation for terminating the grants, and that the education disruption had led to immediate and irreparable harm that could not be remedied by money damages.

Numerous State Attorneys General Sue ED Over Department Layoffs

In mid-March, ED announced a 50% workforce reduction through layoffs and voluntary buyouts. Twenty states and the District of Columbia, through their respective attorneys general, sued ED and Secretary Linda McMahon, challenging the workforce reduction as an unlawful attempt to dismantle the department. The lawsuit, filed in a Massachusetts federal court, contends that eliminating staff overseeing civil rights enforcement, student aid, and special education programs violates congressional mandates, violates the Administrative Procedure Act, and causes irreparable harm to schools and students.

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Colorado Federal Court Permanently Enjoins Anti-Discrimination Policy Against Religious Preschool in Universal Preschool Program

In 2022, Colorado enacted legislation creating a universal preschool program. Participation in the program required preschools to comply with the state non-discrimination policies, which prohibits discrimination based on religion, sexual orientation, or gender identity. A private religious preschool initially agreed to participate in the program but later sought an exemption from the anti-discrimination rules, arguing that its faith-based hiring and student conduct policies conflicted with the state's requirements. After the Colorado Department of Early Childhood refused to grant an exemption, the preschool academy sought a preliminary injunction against enforcement of the anti-discrimination rules, claiming the policy violated the Free Exercise Clause. The district court initially issued a preliminary injunction against enforcement, and Colorado later rescinded one of the contested provisions. For the remaining provisions, at issue on cross-motions for summary judgment, the court granted a narrow injunction, permanently preventing Colorado from enforcing the provisions against the preschool academy. The court determined that Colorado granted exemptions to some types of institutions, but refused to do so for the religious preschool without a compelling interest justifying the differential treatment.

Ninth Circuit (AK, CA, HI, ID, MT, NV, OR, WA): Parents Do Not Have a Consitutional Right to Access School Property

A parent of multiple students in an Arizona school district, who also happened to be a university professor with expertise in behavioral analysis and autism, had been a vocal critic of the school district's special education policies and student accommodations. Following a contentious history with district officials and a physical confrontation with a principal, the district banned the parent from school property. The parent challenged the ban as First Amendment retaliation and on due process grounds. The U.S. Court of Appeals for the Ninth Circuit affirmed in part the grant of summary judgment on the due process claim, holding that parents do not have a constitutional right to access school property. The Ninth Circuit also affirmed that the principal was entitled to qualified immunity on the First Amendment retaliation claim.

Pennsylvania School District Must Disclose DEI Training Materials

A records requester sought DEI training materials from a Pennsylvania school district under state public records laws. The school district denied the request, arguing the materials were trade secrets and confidential proprietary information, as they were created by the district's DEI director before his employment and were used in both his personal business and school training sessions. A Pennsylvania appellate court reversed the denial, holding that the district failed to the established that the materials met the definitions of trade secrets or proprietary information, as they were routinely shared with school staff.

Tenth Circuit (CO, KS, NM, OK, UT, WY): Superintendent's Efforts to Trademark School District Name to Shut Down Facebook Group Deemed First Amendment Violation

Two parents created a Facebook page titled "Los Lunas School District Parent Discussion Page" to facilitate public discussion of school-related matters for a New Mexico school district. Over time, the page became a platform for criticism of school policies and officials. The district superintendent applied for a trademark of the district's name and sent cease-and-desist letters demanding that the parents delete the page. The parents challenged the litigation threat as First Amendment retaliation aimed at silencing criticism. The U.S. Court of Appeals for the Tenth Circuit affirmed the denial of qualified immunity, concluding that that the superintendent's baseless legal threat to suppress public criticism clearly infringed upon free speech rights.

U.S. Supreme Court Petitions to Watch:

- *Hittle v. City of Stockton* – Whether the legal framework for an employment discrimination action requires a plaintiff to disprove the employer's proffered reason for an adverse employment action. ***Petition denied.***
- *L.M. v. Town of Middleborough* – Whether school officials may presume substantial disruption from a student's passive ideological speech (specifically, wearing a shirt that reads, "There are only two genders") merely because the speech relates to matters of personal identity.
- *West Virginia v. B.P.J., by next friend and mother, Heather Jackson* – Whether Title IX or the Equal Protection Clause prevents a state from designating school sports teams based on biological sex determined at birth.
- *Little v. Hecox* – Whether laws that seek to protect women's and girls' sports by limiting participation based on sex violate the Equal Protection Clause.
- *Petersen v. Doe* – Whether Arizona's Save Women's Sports Act, which excludes biological males from girls' and women's sports teams, violates the Equal Protection Clause.

U.S. Supreme Court Petitions to Watch: *(continued)*

- *Warner v. Hillsborough County School Board* – Whether, under 28 U.S.C. § 1654, children must hire an attorney to pursue their claims in federal court, or instead their parents may litigate pro se on their behalf.
- *Hoskins v. Withers* – Whether qualified immunity shields government officials from liability even in cases where they retaliate against a person for exercising a clearly established constitutional right.

U.S. Supreme Court Cases to Watch:

- *St. Isidore of Seville Catholic Virtual School v. Drummond* (consolidated with *Oklahoma Statewide Charter School Board v. Drummond*) – Whether it violates the First Amendment's protection of religious freedom for a state to exclude religious schools from its charter school program just because the school is religious.
- *Mahmoud v. Taylor* – Whether public schools burden parents' religious exercise by compelling elementary school children to participate in instruction on gender and sexuality against their parents' religious convictions without notice or opportunity to opt out.
- *A.J.T. v. Osseo Area Schools, Independent School District No. 279* – Whether the Americans with Disabilities Act requires children with disabilities to satisfy a uniquely stringent "bad faith or gross misjudgment" standard when seeking relief for discrimination relating to their education.
- *FCC v. Consumers' Research* (consolidated with *Schools, Health & Libraries Broadband Coalition v. Consumers' Research*) – Whether Congress unconstitutionally delegated its legislative authority to the FCC by allowing it to determine and administer mandatory contributions to the Universal Service Fund (which provides funding to support internet services to schools and libraries), and whether the FCC improperly subdelegated its regulatory authority to a private company to manage the fund. *(Set for argument 3/26).*
- *Stanley v. City of Sanford* – Whether, under the Americans with Disabilities Act, a former employee — who was qualified to perform her job and who earned post-employment benefits while employed — loses her right to sue over discrimination with respect to those benefits solely because she no longer holds her job.
- *Free Speech Coalition, Inc. v. Paxton* – Whether strict scrutiny or rational basis review applies to a Texas law that restrict minors' access to sexual material but significantly burdens adults' access to protected speech.
- *FDA v. R.J. Reynolds Vapor Co.* – Whether a tobacco product manufacturer may file a judicial review petition in a circuit outside of the District of Columbia if the manufacturer is not located in that circuit but is joined by a seller of their products located in that circuit.
- *FDA v. Wages and White Lion Investments, LLC* – Whether the FDA's denial of an application for authorization to market new e-cigarette products (including candy and fruit flavors) was arbitrary and capricious.
- *U.S. v. Skrmetti* – Whether Tennessee Senate Bill 1, which prohibits medical treatments intended to allow a minor to identify with a purported identity inconsistent with the minor's sex, violates the Equal Protection Clause (a related petition in *L.W. v. Skrmetti* asks whether this same bill violates the fundamental right of parents to make decisions concerning the medical care of their children).