



Court Report

Education Law News You Can Use

GOP school boards: How Republicans fared in school board elections all over the country

GOP-backed parental rights advocates saw mixed results in school board races all over the country after voters in more than two dozen states chose whom they want to represent them and make future decisions for kids.

Ohio State Board of Education to Consider Support for Opposition to Transgender Accommodations

The executive committee of the Ohio State Board of Education has sent to the full board for consideration resolution that opposes proposed resolutions that support transgender accommodations under Title IX and supports a lawsuit against the U.S. Department of Education that fights regulations of school lunches.

Congress Passes Law Curbing Nondisclosure of Sexual Harassment or Assault Claims

The law provides, "With respect to a sexual assault dispute or sexual harassment dispute, no nondisclosure clause or non-disparagement clause agreed to before the dispute arises shall be judicially enforceable in instances in which conduct is alleged to have violated Federal, Tribal, or State law." The law is intended to avoid confidentiality or nondisclosure provisions concerning sexual harassment and sexual abuse claims from being enforceable.

Lawsuit Filed Against Michigan School District Alleges Discrimination Based on Political Views

A lawsuit claims that the National Organization for Women's Club, which urged students to wear pink on a certain day to show support for the federal abortion-rights protections in Roe v. Wade, and another group, which encouraged students to sign up for Planned Parenthood's Peer Education program were permitted access to a public announcement system, but a student seeking to encourage students to oppose Proposal 3, which sought to enshrine the right to abortion within the Michigan constitution, was allegedly denied the opportunity.

Virginia Supreme Court Considering Lawsuit Filed by Teacher Dismissed for Refusing to Use Pronouns Requested by Transgender Student

Teacher raising religious reasons for refusing to accommodate transgender student was fired, and now his case is before Virginia's highest court. The teacher used the student's new name, but the district wanted him to use the pronoun as well. Oral argument before the court stressed the reasonableness of accommodations and impact on the student.

Second Circuit Denies Summary Judgment for County Officials in Case Involving Vaccination Order Regarding School Attendance

Parents of children enrolled in schools in New York filed lawsuit against county health officials based on orders which excluded children who were not vaccinated against measles from attending school and an emergency declaration which barred unvaccinated children, other than those with medical exemptions, from places of public assembly. The 2nd Circuit reversed dismissal of Plaintiffs' Free Exercise claim because the claim raises numerous factual disputes—including whether there is evidence of religious animus, to whom the emergency declaration applied, and what the County's purpose was in enacting the declaration. A health official

commented that “[t]here’s no such thing as a religious exception” and characterized “anti-vaxxers” as “very ignorant.” The court found that a jury could conclude that the health order was designed to target religious objectors to the vaccine requirement because of their religious beliefs.

Pending U.S. Supreme Court Petitions to Watch:

- **Fairfax County School Board v. Doe**: (1) Whether a recipient of federal funding may be liable in damages in a private action under Davis v. Monroe County Board of Education in cases alleging student-on-student sexual harassment when the recipient’s response to such allegations did not itself cause any harassment actionable under Title IX; and (2) whether the requirement of “actual knowledge” in a private action under Davis is met when a funding recipient lacks a subjective belief that any harassment actionable under Title IX occurred.
- **Groff v. DeJoy**: (1) Whether the court should disapprove the more-than-de-minimis-cost test for refusing religious accommodations under Title VII of the Civil Rights Act of 1964 stated in Trans World Airlines, Inc. v. Hardison; and (2) whether an employer may demonstrate “undue hardship on the conduct of the employer’s business” under Title VII merely by showing that the requested accommodation burdens the employee’s coworkers rather than the business itself.
- **Counterman v. Colorado**: Whether, to establish that a statement is a “true threat” unprotected by the First Amendment, the government must show that the speaker subjectively knew or intended the threatening nature of the statement, or whether it is enough to show that an objective “reasonable person” would regard the statement as a threat of violence.
- **Cleveland County, North Carolina v. Conner**: (1) Whether the Fair Labor Standards Act allows an employee, who has been paid at least the required minimum wage and overtime pay at a rate that is at least one and one-half times her regular rate, to sue her employer for and recover unpaid straight-time wages earned in weeks when she worked overtime; and (2) whether Skidmore v. Swift & Co. allows courts to independently evaluate an agency’s non-binding interpretation of a statute.
- **University of Toledo v. Wamer**: Whether schools can be held liable under Title IX of the Educational Amendments Act of 1972 for sexual harassment that ceased before they were notified that it happened.
- **Bronwyn Randel, Petitioner v. Rabun County School District**: In a case involving 14th Amendment Due Process Clause claims regarding the non-renewal of a teacher, the question presented is: Does the existence of a state post-deprivation process preclude a procedural due process claim (a) only where a pre-deprivation process that satisfied constitutional standards would be impracticable, such as because the deprivation was a random or unauthorized act of an errant state official (the rule in ten circuits and under decisions of the highest courts in eight states), or (b) in any case in which, even though compliance with constitutional standards in a pre-deprivation process was practicable, the state post-deprivation process provides some form of remedy for the constitutional deficiency of the pre-deprivation process (the longstanding rule in the Eleventh Circuit)?

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