



# Court Report

Education Law News You Can Use

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## **Fourth Circuit (MD, NC, SC, VA, WV) Upholds Admissions Policy at Elite DC-Area Magnet School**

A highly selective magnet high school in the D.C. metro area revised its admissions policy to select a certain percentage of its incoming class from each of the district's constituent middle schools and the remaining allocation from a holistic review of a standardized application. An advocacy group of district parents challenged the policy under the Equal Protection Clause of the Fourteenth Amendment, claiming the policy was adopted with a racially discriminatory purpose as it would necessarily lead to a reduction in the number of enrolled Asian-American. A divided panel of Court of Appeals for the Fourth Circuit upheld the policy, reasoning in part that the policy did not have a disparate impact on Asian-American students, as those students had greater success in admission than any other racial or ethnic group.

## **Title IX Rulemaking Expected by October 2023**

Within the last year, the U.S. Department of Education has issued proposed rulemaking under Title IX on two fronts. First, proposed rulemaking from July 2022 would include protection for discrimination based on sexual orientation, gender identity, sex stereotypes, and pregnancy. Second, proposed rulemaking from April 2023 would establish criteria for transgender student participation on athletic teams. After receiving over 240,000 and 150,000 public comments respectively, the Departments anticipates an October 2023 date for publication of final rules.

## **Florida School District Sued Over Book Bans**

Free expression advocacy group PEN America, alongside various authors, district parents, and publishing company Penguin Random House, filed suit in federal court against the Pensacola-area Escambia County School District, challenging the removal or restriction of certain books in school libraries. The suit claims that the book bans or restrictions violate the First Amendment for viewpoint discrimination and the Equal Protection Clause of the Fourteenth Amendment for singling out books authored by non-white or LGBTQ individuals.

## **OCR Resolves Book Removal Investigation with Georgia School District**

Forsyth County Schools had received complaints from parents and community members about books with sexually explicit content or LGBTQ material, and in response screened books for sexually explicit material. In turn, the U.S. Department of Education's Office for Civil Rights received a complaint and opened an investigation into whether the book removal created a hostile environment for students under Title IX and Title VI of the Civil Rights Act of 1964. The resolution agreement requires the school district to issue a statement to students explaining the book removal process, offer supportive measures to affected students, and administer a student body survey on school climate.

## **Fifth Circuit (LA, MS, TX) Affirms Dismissal of Autistic Student's Disability Discrimination Suit over Corporal Punishment**

A Louisiana elementary student with autism kicked a behavioral technician during a therapy session, to which

the technician slapped the student's wrist, scolding her. In a second incident months later, after the student pinched another student's neck, a paraprofessional slapped the top of her hand and admonished her. The student sued the school board, the elementary school, and school employees involved in the incident, alleging disparate treatment disability claims under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. The Court of Appeals for the Fifth Circuit affirmed dismissal of the suit, reasoning that although the student's outburst were caused by her disability, her discipline was not due to her disability.

#### **Pending U.S. Supreme Court Petitions to Watch:**

- **[The Ohio State University v. Snyder-Hill](#)** (linked with [The Ohio State University v. Gonzales](#)): Whether, or to what extent, a claim under Title IX accrues after the date on which the alleged injury occurred (e.g., by a state statute of limitations for personal injury actions of two years, or by when the alleged victims learn of the abuse and the school's inaction).
- **[Kincaid v. Williams](#)**: Whether the diagnosis of gender dysphoria, found in the DSM-5, is excluded from the Americans with Disabilities Act's definition of disability under 42 U.S.C. § 12211(b).
- **[Charter Day School, Inc. v. Peltier](#)**: Whether a private entity that contracts with the state to operate a charter school engages in state action when it formulates a policy without coercion or encouragement by the government. (Specifically, whether the charter school violates Title IX by enforcing a student dress code requiring girls to wear skirts).
- **[K.M. v. Adams](#)**: Whether the Individuals with Disabilities Education Act's requirement that administrative remedies be exhausted before a judicial challenge under the act may be brought is jurisdictional, or rather a claim-processing rule that must be raised as an affirmative defense that may be waived.

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