



Court Report

Education Law News You Can Use

[Sixth Circuit \(KY, MI, OH, TN\) Upholds Suspension of Student Who Mockingly Impersonated Teacher on Instagram](#)

A Michigan high school student created an Instagram account impersonating one his teachers. As the student gave account access to two of his friends, his friends added several posts that displayed or referenced other teachers with explicit, harassing captions. The principal, after an internal investigation uncovering the conduct, immediately suspended the student for five days. After a disciplinary hearing, the superintendent suspended the student for 10 days, citing “gross misbehavior” in his conduct, mirroring language in the student handbook. The student’s father, as next friend, sued the school district, the superintendent, and the principal, alleging free speech and due process violations. The United States Court of Appeals for the Sixth Circuit affirmed the district court’s grant of summary judgment for the school defendants. First, on the free speech claim, the Sixth Circuit joined three other circuits in holding that “when a student causes, contributes to, or affirmatively participates in harmful speech, the student bears responsibility for the harmful speech.” Although the student’s friends posted the harmful material, the student still bore responsibility by creating the account and sharing access. Second, on the due process claim, the parent challenged the handbook policy language of “gross misbehavior” as unconstitutionally vague. The court explained that although the term injects “some imprecision or subjectivity” as a standard, “schools are not held to the utmost specificity in drafting their disciplinary rules,” but instead enjoy some latitude in that area.

[Oklahoma School Board Approves Application for Nation’s First Publicly Funded Religious Charter School](#)

The Oklahoma Statewide Virtual Charter School Board, by a 3-to-2 vote, approved the application for an online Catholic charter school, despite concerns raised by the board’s legal counsel over the school’s constitutionality. Although Oklahoma’s governor [applauded the decision](#), the Oklahoma Attorney called the decision [contrary to law](#). Commentators [expect legal challenges](#).

[Oklahoma Federal District Court Dismisses Suit Over Transgender Birth Certificate Policy](#)

For at least 14 years, Oklahomans could change the sex designation on their birth certificates to match their gender identity, but the practice ended in fall 2021 by executive order from the governor. Three transgender individuals born in Oklahoma sued state officials after their petitions for changing their sex designations were denied, claiming multiple constitutional violations of free speech, due process, and equal protection. The United States District Court for the Northern District of Oklahoma dismissed the claims. The court found that the designation on their birth certificates is neither expressive conduct nor compelled speech; rather, it is government speech that does not implicate the First Amendment. As to the remaining claims, the court declined to recognize transgender status as a suspect or quasi-suspect classification under the Equal Protection Clause and further declined to recognize the right to amend the sex designation on a birth certificate as a fundamental liberty interest under the Due Process Clause.

Texas Passes Law Banning “Sexually Explicit Material” in Books, While Illinois Outlaws Book Bans

Texas’ governor signed a bill directing a state agency, with approval from the State Board of Education, to adopt standards for public school library collections. The adopted standards must include a policy that prohibits the possession, acquisition, and purchase of library material rated sexually explicit material. Such a rating comes from book vendors, as the bill further requires. The bill takes effect September 1, 2023.

Meanwhile, Illinois’ governor signed a bill that will deem a library ineligible for state funding if it removes materials “because of partisan or doctrinal disapproval.” The bill, reportedly the first of its kind in the nation, takes effect beginning of 2024.

ACLU Challenges Indiana Law Prohibiting Elementary Sex Education

Indiana recently enacted a bill taking effect this July, which in part prohibits schools from providing “any instruction” on “human sexuality” before the fourth grade. A teacher, represented by the ACLU of Indiana, filed a lawsuit against the Indiana Secretary of Education, seeking injunctive relief against its enforcement, which could result in teaching license revocation or suspension. The suit contends that the undefined terms “instruction” and “human sexuality” are unconstitutionally vague such that the teacher does not know how to conform her conduct in accordance with the law.

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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