COSSBA
CONSORTIUM OF STATE SCHOOL BOARDS ASSOCIATIONS

Court Report

Education Law News You Can Use

U.S. Supreme Court Strikes Down Harvard's and UNC's Race-Based Affirmative Action Plans

The Supreme Court held that the admissions programs at Harvard University and the University of North Carolina violated the Equal Protection Clause of the Fourteenth Amendment. The admissions programs of the two universities similarly considered (sometimes determinatively) an applicant's race throughout the admissions process. Chief Justice Roberts wrote for the six-justice majority, which concluded that "[b]oth programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points." The Court explained that in a university admissions process, students must be treated based on their individual experiences, not on race; however, a university could consider an applicant's "discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise" such that it would inform the applicant's characteristics: "A benefit to a student who overcame racial discrimination, for example, must be tied to that student's courage and determination." A three-justice dissent authored by Justice Sotomayor criticized the Court for overruling its precedent affirmative action decisions. An additional three-justice dissent authored by Justice Jackson discussed practical benefits of considering race in applications and predicted negative effects from the Court's decision.

U.S. Supreme Court Raises Standard for 'True Threats'

A Colorado man sent hundreds of Facebook messages to a local singer whom he had never met. The singer repeatedly blocked the man, but the man would create a new account and continue sending messages. Although some messages feigned friendship, others suggested the man knew her whereabouts (e.g., "Was that you in the white Jeep?") or expressed anger and potential harm, putting the singer in significant daily existential fear and anxiety. The man was criminally charged under a state statute prohibiting repeated communications with a person that would and did cause a reasonable person to suffer serious emotional distress. The man challenged the charges on First Amendment grounds, arguing that his messages were not "true threats" (that are unprotected speech). In a 7-2 decision authored by Justice Kagan, the Supreme Court held that in criminal cases involving true threats, the First Amendment requires the prosecution to prove that the defendant had some subjective mindset of the threatening nature of the statements. However, the mindset required is a recklessness standard: that the defendant consciously disregarded a substantial risk that the communications would be viewed as threatening violence.

U.S. Supreme Court Clarifies Title VII Standard for Religious Accommodations

Title VII of the Civil Rights Act 1964 forbids employers from discriminating against employees on the basis of their religion, obligating employers to make reasonable accommodations to the religious needs of employees whenever that would not work an undue hardship on the conduct of the employer's business. A 1977 Supreme Court opinion interpreted "undue hardship" to mean any effort or cost that is more than "de minimis," a low standard. In a unanimous opinion involving an Evangelical Christian postal carrier who devotes Sundays to rest and worship but received progressive discipline from the U.S. Postal Service for refusing to work on Sundays, the Court clarified that for an employer to avoid liability for failure to accommodate, "an employer must

show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." Courts will evaluate this with a practical eye toward the nature, size and operating cost of an employer. The Court further clarified that an employer cannot merely "assess the reasonableness of a particular possible accommodation," but that it should consider multiple options to reasonably accommodate the religious practice.

Third Circuit (DE, NJ, PA) Rules that Student's Adult Cousin Qualified as Student's "Parent" Under the IDEA

A Pennsylvania student resides with her adult cousin who makes educational decisions for her, but the cousin lacks legal custody over her. When the cousin filed an IDEA due process complaint on the student's behalf, the school district moved to dismiss the complaint for lack of standing, claiming that the cousin did not qualify as a "parent" under IDEA. The U.S. Court of Appeals for the Third Circuit concluded that the cousin fit within the statutory definition of "an individual acting in the place of a natural or adoptive parent … or other relative … with whom the child lives."

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). **Petitions denied.**
- **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). **Petition denied.** The denial leaves in place the decision from the U.S. Court of Appeals for the Fourth Circuit (MD, NC, SC, VA, WV), which concluded that the charter school was engaging in state action and the dress code violated the Equal Protection Clause of the Fourteenth Amendment.
- **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. **Petition denied.**
- **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).

Compiled By:

BOSE McKINNEY & EVANS LLP
ATTORNEYS AT LAW

BOSE public affairs group