



Court Report

Education Law News You Can Use

Ninth Circuit (AK, AZ, CA, HI, ID, MT, NV, OR, WA) Affirms Injunction Against Idaho's Transgender Sports Ban

Idaho's Fairness in Women's Sports Act required athletic teams to be designated based on biological sex and prohibited participation on female-designated teams from members of the male sex (i.e., effectively banning transgender participation in women's sports). The act further set forth a verification process for disputes regarding a student's sex that includes medical examination of reproductive anatomy. A transgender woman wanting to try out for an intercollegiate athletics team challenged the law under the Equal Protection Clause of the Constitution and sought a preliminary injunction against its enforcement. The United States Court of Appeals for the Ninth Circuit affirmed the lower court's finding that the transgender woman was likely to succeed on the merits of her claim for purposes of injunctive relief. The Ninth Circuit concluded that the act classifies based on sex and thus triggered heightened scrutiny under the Equal Protection analysis. Further, the court concluded that the act likely does not survive the heightened scrutiny, reasoning that the act's sex-based classification was not substantially related to its asserted objectives of promoting equality and fairness in female athletic teams. As one basis for this reasoning, the court found the law over-inclusive in its prohibition, as there was no evidence that prepubescent transgender girls had any physiological advantage over cisgendered girls.

Minnesota Public School Can Display 'Black Lives Matter' Posters

Following the high-profile controversy surrounding the death of George Floyd in Minneapolis, a Minnesota school district authorized the display of a series of posters, some of which included the phrase "Black Lives Matter" in connection with the homonymous socio-political movement. Some students and parents challenged the display under the First Amendment, claiming the school district discriminated against their viewpoint in denying display of additional posters and compelled them to subsidize (as taxpayers) unwanted political advocacy. The United States District Court for the District of Minnesota dismissed the First Amendment claims due to the government speech doctrine: when the government speaks for itself, that speech is not subject to First Amendment challenges. The court reasoned in part that the posters were developed as a way to communicate with students and the public would likely perceive the posters to be a message to students.

First Circuit (ME, MA, NH, PR, RI) Holds that Parents Lacked Standing to Challenge COVID-related School Closures

Three children with disabilities and their parents sued the Governor of Massachusetts and other state officials over the closure of in-person education due to the COVID-19 pandemic, claiming that the closure deprived the children of the free appropriate public education to which they are entitled under the Individuals with Disabilities Education Act. The plaintiffs sought injunctive relief, but the United States Court of Appeals for the First Circuit affirmed dismissal of the suit due to lack of Article III standing. The court explained that the plaintiffs did not set forth any facts suggesting another school closure was imminent, and further that an alleged past injury cannot create standing to seek an injunction against future harm.

Ohio Federal Court Denies Preliminary Injunction on Policy Prohibiting Intentional Misgendering

An Ohio school district issued several policies on harassment, namely one that prohibits speech involving discriminatory language based on certain characteristics, including transgender identity. A group of anonymous students and parents challenged the policy as unconstitutionally overbroad in violation of the First Amendment, citing an example that a student choosing not to address another student with a preferred pronoun (consistent with sincerely held religious beliefs) would constitute discrimination under this policy. The challenging group sought a preliminary injunction on enforcement of the policy. The United States District Court for the Southern District of Ohio denied the motion for preliminary injunction, concluding that the group was not likely to succeed on the merits of the First Amendment challenge. The court found that the policy was limited in scope in a few respects, namely that it did not punish every off-campus use of discriminatory language, and it sought to prohibit discriminatory speech that rose to a certain severity, such as causing a reasonable threat of harm or interfering with student performance.

Pending U.S. Supreme Court Petitions to Watch:

- **Coalition for TJ v. Fairfax County School Board** – Whether a school district violated the Equal Protection Clause in revising the admissions policy for a highly selective magnet high school 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, allegedly in furtherance of a racial balancing goal.
- **Devillier v. Texas** - Whether a person whose property is taken by the government without compensation may seek redress under the Takings Clause of the Fifth Amendment.
- **O’Handley v. Weber** – Whether the government speech doctrine empowers state officials to tell a social media platform to remove political speech that the state deems false or misleading.

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