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Court Report

Education Law News You Can Use

Federal Judge Enjoins Florida's Pronoun Restriction Against Transgender Teacher

A Florida law mandates that public K-12 employees cannot refer to themselves with preferred pronouns inconsistent with their biological sex. Two teachers, one transgender and one nonbinary, sought preliminary injunctions against continued enforcement of the law against them in part on First Amendment grounds. The United States District Court for the Northern District of Florida found that the nonbinary teacher (they/them), who had been fired from their previous school for failure to comply with the law, lacked standing to pursue their claim because they had not shown that they were seeking employment at a school subject to the speech restrictions.

But the court reached the merits of the transgender teacher's First Amendment challenge, applying the test for public employee speech (*Garcetti v. Ceballos*). The court found that the teacher was speaking as a citizen on a matter of public concern when she shared her preferred pronouns with students at school. The court reasoned that the teacher's speech is personal and self-referential, unmistakably not conveying a government message regarding her identity, and thus she was speaking as a citizen. The court further reasoned that this speech was a on a matter of public concern, evidenced by significant social debate on the topic, the State's choice to enact legislation on the topic, and that the teacher is expressing her identity publicly. Moreover, the court found that the teacher's interest in publicly expressing her identity outweighed the State's interests in enforcing a viewpoint-based restriction on her speech. Ultimately, concluding with a Walt Whitman poem, the court enjoined state officials from enforcing the law against the transgender teacher.

Eighth Circuit (AR, IA, MN, MO, NE, ND, SD) Upholds Missouri School District's Discipline of Students for Racially Insensitive Online Petition

As part of an ill-advised "joke," a biracial ninth-grader created an online petition depicting a Black classmate titled "Start Slavery Again" and circulated the petition to his football teammates via Snapchat, which garnered additional insensitive commentary and participation. Following an internal investigation, disciplinary conferences, and an administrative appeal hearing, the school district ultimately expelled the student that created the petition and suspended the other students that commented on the petition, requiring those students to undergo diversity and inclusion training before returning to school. The disciplined sued the school district and various officials, asserting an Equal Protection on the basis that the school did not punish the Black student depicted in the petition, claiming that student was a willing participant in the conduct. The United States Court of Appeals for the Eighth Circuit rejected this claim, finding that there was no evidence suggesting that the Black student was similarly situated to the disciplined students, as the Black student's involvement was limited: he did not create or comment on the petition.

New Idaho Law: Libraries Must Move Materials Deemed Harmful to Children or Face Lawsuits

Idaho's governor signed a bill into law that lets parents file a lawsuit against a public or school library if the library does not relocate materials deemed harmful to minors within 60 days to an adults-only section. As defined in the law, material that is harmful to minors generally includes sexually explicit materials. The law provides for $250 in statutory damages, as well as actual damages and injunctive relief. Some librarians have described the law as unneeded, as local library policies have established a similar process for relocation of inappropriate material.

Colorado Supreme Court Affirms Warrantless Search of Student Pursuant to Safety Plan

A Colorado high schooler was adjudicated delinquent in connection with two firearm-related offenses during his freshman year. In response, the school developed a safety plan that required daily searches of the student. Leading up to the student's sophomore year, the student's mother withdrew him from that school, but later re-enrolled him. Upon his return, due to an apparent breakdown in communication, school officials did not search the student for the first two days of his return. On the student's third day back, school officials asked that he comply with the search as before, and the student refused. An SRO seized him, searched his backpack, and found a loaded handgun. The student challenged the search as unreasonable under the Fourth Amendment. Applying the test from New Jersey v. TLO, the Colorado Supreme Court concluded that although the student did not do anything on that particular day to give to rise to suspicion justifying a search, the search was nevertheless justified at its inception, reasoning that a search carried out in accordance with a previously established safety plan diminishes the student's expectation of privacy, and that additional individualized suspicion is not required.

Pending U.S. Supreme Court Petitions to Watch:

- **John and Jane Parents 1 v. Montgomery County Board of Education** – (1) Whether when a public school, by policy, expressly targets parents to deceive them about how the school will treat their minor children, parents have standing to seek injunctive and declaratory relief in anticipation of the school applying its policy against them; and (2) whether, assuming the parents have standing, a school policy that requires school employees to hide from parents that their child is transitioning gender at school if, in the child's or the school's estimation, the parents will not be "supportive" enough of the transition, violates their fundamental parental rights.
- **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.
- **Dutra v. Jackson** – Whether U.S. Supreme Court precedents are the only source of clearly established law for purposes of qualified immunity (instead of a federal circuit court's precedent).

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