



# Court Report

Education Law News You Can Use

---

---

## **Fourth Circuit (MD, NC, SC, VA, WV): Parents Can't Enjoin District's Refusal to Provide Opt-Out from Exposure to LGBTQ-themed Books**

Maryland's largest school district, Montgomery County Public Schools, approved a group of books through its regular curriculum adoption process denominated as LGBTQ-inclusive as part of the language arts curriculum. The books vary in content, but typically express the authors' views on sexual orientation by portraying certain LGBTQ characters in various situations. When the school board canceled a policy that allowed for parent notice and opt-out related to the books, a group of parents challenged the canceled policy and sought a preliminary injunction, contending a violation of the Free Exercise Clause of the First Amendment. At bottom, the parents asserted that they are entitled to notice and the opportunity to opt out of classroom instruction on sensitive religious and ideological issues, and the failure to provide such notice and opt-out coerces religious beliefs and practices by exposing their children to viewpoints at odds with their religious beliefs.

The United States Court of Appeals for the Fourth Circuit affirmed the district court's denial of a preliminary injunction. The court acknowledged a thin evidentiary record on appeal, explaining there was no description of how the books at issue were actually being used in the classrooms or what conversations ensued about their themes. Absent that, the parents had not shown a cognizable burden on religious exercise that the books were implemented in a way that coerces the parents or their children to believe or act contrary to their religious faith, as mere exposure alone is not a cognizable burden. While the preliminary injunction fails, the parents may present more evidence of burdens and infringement throughout the litigation.

## **Arkansas Federal Judge Issues Narrow Injunction on State Law Targeting CRT in Schools**

Section 16 of the LEARNS Act, a recent Arkansas law, proscribes "teaching that would indoctrinate students with ideologies such as Critical Race Theory ... that conflict with principle of equal protection under the law...." The law further defines "prohibited indoctrination" to include "communication by a public school employee." A group of teachers challenged the law as unconstitutionally vague, and claimed they were self-censoring their teaching to avoid running afoul of the law. In turn, a group of students challenged the law on First Amendment grounds, citing the teacher's described self-censorship as depriving them of things they would have otherwise learned. The United States District Court for the Eastern District of Arkansas issued a very narrow injunction, applying to the parties at issue instead of statewide. The injunction in effect allows the teacher-plaintiffs to discuss Critical Race Theory, but state officials may prevent those teachers from compelling a student to adopt or affirm a theory or ideology conflicting with equal protection.

## **Eighth Circuit (AR, IA, MN, MO, NE, ND, SD): Compensatory Education Under IDEA Available After Student's 21st Birthday**

During the course of litigation challenging a student's IEP, the student had turned 22 years old, past the qualifying age (21) for a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). Although the school district contended that the appeal was thus moot, the United States Court of Appeals for the Eighth Circuit disagreed and joined a few circuit courts in holding that compensatory education may be available beyond a student's twenty-first birthday.

## Virginia Appellate Court: School Officials' Statements Suggesting Opposing Team's Football Coach Improperly Recruited Non-Defamatory Due to Qualified Privilege

Following a high school football game between two Virginia public schools from neighboring counties, school officials from the home team reported that the opposing coach made inappropriate statements during the game, while another official from the home team posted on social media that the opposing coach had attempted to recruit recruit players, which would violate the state high school athletic league's rules. The opposing coach sued the home school officials, alleging defamation in those statements. The Court of Appeals of Virginia affirmed dismissal of the complaint, finding that a qualified privilege applied to the school officials' statements. As the statements were made within the course of public school employment, and each party to the case was an employee at a school subject to the state high school athletic league's rules, every party had an interest in ensuring student well-being and protecting students from the unsportsmanlike, prohibited practice of recruiting.

## Iowa Law to Improve Early Literacy with Personalized Teaching Plans

Iowa's governor signed into law a bill that targets students in grades K-6 who are not reading at grade level. The law requires for any such student that the school district notify the parent/guardian, retain the student in the current grade level, and provide a personalized reading plan until the student is reading at grade level.

## **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. ***Petition denied.***
- **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.

Compiled By:

**BOSE  
McKINNEY  
& EVANS LLP**  
ATTORNEYS AT LAW

