



Court Report

Education Law News You Can Use

New Hampshire Federal Court Overturns State Law on Teaching Divisive Concepts

A New Hampshire law identified four concepts that public school students may not be “taught, instructed, inculcated or compelled to express belief in, or support for,” including for example, “that an individual, by virtue of [a host of characteristics], is inherently racist, sexist, or oppressive, whether consciously or unconsciously.” However, the law did not provide definitions, and no state agency adopted regulations explaining the law. The court found that the law was unconstitutionally vague in part because the law did not provide fair notice to teachers as to the prohibited concepts and did not adequately explain when classroom discussion of a concept constitutes impermissible teaching. As one illustration of the law’s vagueness, the court posed a question of whether a teacher discussing the dissenting opinions of the Supreme Court’s most recent affirmative action decision would run afoul of teaching a divisive concept under the law.

Ninth Circuit (AK, CA, HI, ID, MT, NV, OR, WA): Washington Required to Provide IDEA Services to 21-Year-Olds Due to Offering of Adult Education Programs

Under the Individuals with Disabilities Education Act, generally a student’s eligibility for IDEA services ordinarily ends on the student’s twenty-second birthday. IDEA contains an exception that a state need not provide a free and appropriate public education to disabled students between the ages of 18 and 21 if the state does not otherwise provide a public education to non-disabled students of that age range. In the State of Washington, public schools are not open to non-disabled 21-year-olds, but Washington provides other adult-education programs (e.g., GED prep). The Ninth Circuit concluded that the availability of those adult-education programs to non-disabled 21-year-olds triggers an obligation under IDEA for Washington to provide IDEA services to disabled 21-year-olds.

Pennsylvania Court Voids Special Education Age-Out Plan

Before August 2023, Pennsylvania policy required schools to provide IDEA services to students with disabilities until end of the school term in which the students reach their twenty-first birthday. In late August 2023, the Pennsylvania Department of Education issued a directive that extended IDEA services to students enrolled in public schools until they turn 22 years old. The Pennsylvania School Boards Association, among other groups, challenged the policy change in part for lack of proper notice. The court found the policy change to be a binding regulation with the force of law, requiring the department to promulgate the change through applicable administrative procedures. As the department did not do so, the court voided the policy change.

Congressional Research Service Releases Report on Rights of Students with Disabilities

In mid-May, the Congressional Research Service issued a report on the rights of students with disabilities under IDEA, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. The report serves as a useful resource in the application of those laws.

DOJ Publishes Final Rule on Web Accessibility

The Department of Justice published its final rule on website content accessibility for state and local governments, implementing Title II of the Americans with Disabilities Act. The Department adopted the Web

Content Accessibility Guidelines (WCAG) Version 2.1, Level AA as the technical standard for compliance. Schools will need to ensure that websites, mobile apps, and digital textbooks contain accessible text, images, and videos for those with disabilities.

Pending U.S. Supreme Court Petitions to Watch:

- **[J.W. v. Paley](#)** - Whether a claim that a school official has used excessive force against a student that meets the definition of a Fourth Amendment seizure should be evaluated under the Fourth Amendment's objective-reasonableness standard or the 14th Amendment's shocks-the-conscience standard.
- **[L.W. v. Skrmetti](#)** – Whether Tennessee's Senate Bill 1, which categorically bans gender-affirming healthcare for transgender adolescents, likely violates the Fourteenth Amendment fundamental right of parents to make decisions concerning the medical care of their children.
- **[Pitta v. Medeiros](#)** - Whether the act of recording a government employee engaged in his or her duties is inherently expressive activity entitled to First Amendment protection, and whether a citizen has a presumptive right to record government employees when that individual is lawfully present. (Specifically, the petitioner sought to record an IEP meeting.)
- **[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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