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Court Report

Education Law News You Can Use

Final Title IX Rule Enjoined in Ten States

Across four lawsuits, at least 15 states have challenged the latest Title IX final rule generally regarding student access to facilities based on gender identity. Two of the suits thus far have seen injunctive relief granted, with the issued orders taking issue with the rule's interpretation of "sex discrimination" to include gender identity. The United States District Court for the Western District of Louisiana described the rule as "demonstrat[ing] the abuse of power by executive federal agencies in the rulemaking process." Its injunction applies to four states: Louisiana, Mississippi, Montana, and Idaho. The United States District Court for the Eastern District of Kentucky issued a similar injunction days later, describing parts of the regulation as "arbitrary in the truest sense of the word." Its injunction applies to six states: Tennessee, Kentucky, Ohio, Indiana, Virginia, and West Virginia.

Oklahoma Supreme Court: Religious Charter School Unconstitutional

Oklahoma's Charter School Board had approved an application from the Archdiocese of Oklahoma City and the Diocese of Tulsa to operate a virtual Catholic charter school. The Oklahoma Supreme Court held that establishing or funding the school violates the Establishment Clause of the First Amendment, the Oklahoma Constitution, and the Oklahoma Charter Schools Act. The court reasoned that the Establishment Clause prohibits state actors from requiring students to participate in religious activities, which the proposed school would have required as a Catholic school. The Oklahoma Constitution, by its plain language, prohibits the use of public money to support a religious denomination. And the Oklahoma Charter Schools requires that charter school be nonsectarian in programs and operations.

Oklahoma's Top Education Official Requires Schools to Incorporate the Bible in Curriculum

Oklahoma's State Superintendent of Public Instruction issued a directive, effective immediately, requiring schools to incorporate the Bible and the Ten Commandments "as instructional support into the curriculum" across grades 5-12. In a later interview, the state official explained that a teacher's failure to comply with the directive could face licensing revocation.

Louisiana Law Requires Display of Ten Commandments in Classrooms; Legal Challenge Ensues

Louisiana enacted House Bill 71, which, starting in 2025, requires public schools to display the Ten Commandments on an 11"x14" poster in each classroom, displayed with a context statement. The law's language elaborates on legislative intent, seemingly setting forth secular purposes for the display. In that vein, the law quotes the U.S. Supreme Court, which has described the Ten Commandments to "have historical significance as one of the foundations of our legal system…" and represents a "common cultural heritage." Within days, a multi-faith parent group, represented by the ACLU, filed a complaint in the U.S. District Court for the Middle District of Louisiana, claiming that the law violates the Establishment Clause of the First Amendment.

Oklahoma Federal Court Enjoins Part of Law on Teaching Divisive Concepts

An Oklahoma law, enacted in 2021, directs that no public school teacher "shall require or make part of a course" eight enumerated concepts, such as "one race or sex is inherently superior to another race or sex."

(Although the law does not expressly describe these as "divisive concepts," Oklahoma's law largely mirrors similar laws in other states that describe the concepts that way.) Against a challenge for unconstitutional vagueness (in violation of Fourteenth Amendment due process), the court found two concepts in particular were likely impermissibly vague: (i) that "an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex," and (ii) that "members of one race or sex cannot and should not attempt to treat others without respect to race or sex." The court reasoned that "treat" and "treatment" allowed the concept to extend across a multitude of contexts (social, political, historical, and religious), and thus did not provide fair notice of prohibited discussion.

First Circuit (ME, MA, NH, PR, RI): School Can Censor Student's "Only Two Genders" Shirt

At a Massachusetts middle school, a seventh-grader wore a black t-shirt that displayed "There Are Only Two Genders." School officials pulled the student from class and would not let him return to class wearing the shirt, citing part of the school dress code, which provided that "Clothing must note state, imply, or depict hate speech or imagery that target[s] groups based on … gender, sexual orientation, gender identity … or any other classification." The student refused to comply, and his father picked him up and took him home that day. Weeks later, the student wore the shirt again with modification, taping over the words "Only Two" and overwriting "CENSORED" on the tape (i.e., "There Are [CENSORED] Genders"). School officials pulled the student from class again, and the student removed the shirt and returned to class. He was not disciplined otherwise. The student brought a First Amendment challenge against the school district and school officials.

The United States Court of Appeals for the First Circuit emphasized that it was not substituting its judgment for the school's in application of the dress code, but ultimately upheld the school officials' actions. Applying the principles from the U.S. Supreme Court's landmark decision in Tinker (the black armband case from 1969), the First Circuit reasoned that school officials were not unreasonable in concluding that the shirts would be understood by other students (of which the school knew belonged to the LGBTQ community) as demeaning to their identity, and they reasonably forecasted the shirt would be materially disruptive to the learning environment.

New York High Court: Public School Districts Not Obligated to Provide Transportation to Private Schools When Public Schools are Closed

Parents with children in private and parochial schools sought to require a New York public school district to transport their children to schools on days when the public schools were closed, relying on a state law requiring school districts to provide "sufficient transportation facilities" for all children residing in the school district. The New York Court of Appeals, its highest state court, concluded that the phrase was ambiguous, and the statute's legislative history did not support public funding of non-public schools.

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. ***Petition denied.***
- **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.) ***Petition denied.***
- **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.
- **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.
- **Williams v. Washington** – Whether a plaintiff must first exhaust state administrative remedies before bringing a claim under Section 1983 claim in state court.
- **Lackey v. Stinnie** – (1) Whether a party must obtain a ruling that conclusively decides the merits in its favor, as opposed to merely predicting a likelihood of later success, to prevail on the merits under 42 U.S.C.

§ 1988; and (2) whether a party must obtain an enduring change in the parties' legal relationship from a judicial act, as opposed to a non-judicial event that moots the case, to prevail under Section 1988.

- **E.M.D. Sales, Inc. v. Carrera** – Whether the burden of proof that employers must satisfy to demonstrate the applicability of a Fair Labor Standards Act exemption is a mere preponderance of the evidence or clear and convincing evidence.
- **Stanley v. City of Sanford** – Whether, under the Americans with Disabilities Act, a former employee — who was qualified to perform her job and who earned post-employment benefits while employed — loses her right to sue over discrimination with respect to those benefits solely because she no longer holds her job.
- **Wisconsin Bell, Inc. v. US ex rel. Heath** – Whether reimbursement requests submitted to the Federal Communications Commission's E-rate program are "claims" under the False Claims Act.

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