Court Report

Education Law News You Can Use

Another Injunction Issued on Final Title IX Rule, Now Enjoined in 14 States

A third injunction, this one from the United States District Court of Kansas, has blocked the Title IX final rule regarding student access to facilities based on gender identity. The court found that the U.S. Department of Education lacked authority to expand the meaning of "sex discrimination" to include gender identity, as the final rule involved issues of vast economic and political significance such it required a clear authorization from Congress to promulgate, an authorization absent here. The opinion also describes the issue as one where the federal government is "interpos[ing] itself into the field of education, an area traditionally left to state and local governments, and the schools, themselves." The decision adds Kansas, Alaska, Utah, and Wyoming to the list of 10 other states (as of the last report) where the rule is ineffective.

U.S. House Passes Joint Resolution Seeking to Overturn Title IX Rule

In a related vein, the House of Representatives voted 210-205 along party lines to pass a joint resolution invoking the Congressional Review Act to nullify the final Title IX rule. But even if the resolution passes through Congress, the White House issued a statement that the President would veto the resolution.

U.S. Supreme Court Declines Review of Student Sexual Abuse via Social Media Case

The U.S. Supreme Court denied review of *Doe v. Snap, Inc.*, in which a Houston-area female high school teacher used Snapchat to send sexually explicit messages and material to a male student and foster an inappropriate sexual relationship. The student sought to hold Snap, Inc. (which owns Snapchat) liable for allegedly encouraging or failing to monitor the sexual abuse. (In a separate criminal case, the teacher pled guilty to sexual assault.) The United States Court of Appeals for the Fifth Circuit (LA, MS, TX) previously held that the company could not be liable, as Section 230 of the Communications Decency Act provides immunity for online platforms based on third-party content generated by users. Justice Thomas, joined by Justice Gorsuch, dissented from the denial of certiorari, reasoning that the case presented a good opportunity to revisit "the sweeping immunity" provided by Section 230.

First Circuit (ME, MA, NH, PR, RI): School District Justified in Terminating Teacher for Controversial Pre-Employment Social Media Posts

A teacher liked, shared, or reposted several memes to her TikTok account (@NanaMacof4), which did not identify her name or where she worked. The memes touched on hot-button political issues, such as gender identity, racism, and immigration. For example, one text-display meme read in part: "I feel bad for parents nowadays. You have to be able to explain the birds & the bees … The bees & the bees … The birds that used to be bees…" Weeks after the posts, the teacher was elected to the school board in the district where she resided and was hired at another public school in Massachusetts about an hour away. The posts later became public knowledge and garnered media attention in connection with her elected position. When the employing school district learned of the posts, they decided to terminate her employment out of concern for the potential negative impact the posts would have on staff and students.

The terminated teacher asserted a First Amendment retaliation claim. The United States Court of Appeals for the First Circuit, in an opinion written in remarkably plain language and easily understood style, held that the

legal framework for analyzing First Amendment claims in the context of public employment (Garcetti) applied even though the speech occurred before her employment, and that the school was adequately justified in terminating her. In balancing the competing interests of the teacher's First Amendment rights versus the school's interest in preventing disruption in the learning environment, the court reasoned that the teacher's First Amendment interest weighed less because the speech was done in a derogatory and disparaging manner. The court also reasoned that the school's anticipation of disruption was justified, given the extensive media attention surrounding the related school board issues from the neighboring community.

Colorado Judge Dismisses Lawsuit Brought by Colorado School District Challenging State's Universal Preschool Program

With landmark legislation, Colorado launched a universal preschool program and created the Colorado Department of Early Childhood to oversee and implement the program, shifting authority away from the Colorado Department of Education. Several school districts and educational cooperatives challenged the program administration on statutory and contractual grounds. The state trial court dismissed the claims, concluding that the plaintiffs had not alleged an injury in fact to a legally protected interest under state or federal law.

Pending U.S. Supreme Court Petitions to Watch:

- **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. ***Petition denied.***
- **Parents Protecting Our Children, UA v. Eau Claire Area School District** – Whether parents subject to a school district's policy regarding parental decision-making authority over a major health-related decision have standing to challenge the policy.
- **State of West Virginia v. B.P.J, by next friend and mother, Heather Jackson** – Whether Title IX or the Equal Protection Clause prevents a state from designating school sports teams based on biological sex determined at birth.
- **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.
- **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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