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Court Report

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Final Title IX Rule Now Blocked in 26 States

The implementation date (August 1) for he Biden Administration's final Title IX rule regarding sex discrimination and gender identity has passed, but additional courts, most recently, the United States Court of Appeals for the Eleventh Circuit (AL, FL, GA), have enjoined the rule, now blocked in over half the country. The U.S. Solicitor General has asked the U.S. Supreme Court for a partial stay of the injunctions arising out of Louisiana and Tennessee.

California Bans School Rules Requiring Parent Notification of Child's Pronoun Change; Lawsuit Immediately Follows

California signed into law AB 1955, the Support Academic Futures & Educators for Today's Youth (SAFETY) Act, which effective in January, prohibits school districts from enacting any policy requiring an employee to disclose any information related to a student's sexual orientation, gender identity, or gender expression to any other person without the student's consent (unless otherwise required by law). This legislation is the first of its kind across the nation. A Southern California school district filed a complaint against Governor Gavin Newson in the United States District Court for the Eastern District of California, seeking pre-enforcement injunctive relief. The complaint alleges that the law violates substantive due process under the Fourteenth Amendment to the U.S. Constitution, the Free Exercise Clause of the First Amendment, and the Family Educational Rights and Privacy Act (FERPA).

Sixth Circuit (KY, MI, OH, TN): School Can Enforce Preferred Pronoun Policy

A Columbus, Ohio, area school district issued several policies on harassment, namely one that prohibits speech involving discriminatory language based on certain characteristics, including transgender identity. In effect, the policies prohibit the intentional use of pronouns inconsistent with a student's gender identity where such use rises to the level of harassment. A group of anonymous students and parents brought a pre-enforcement challenge, claiming that the policies violate the First Amendment as compelled speech, viewpoint discrimination, and overbroad. The United States Court of Appeals for the Sixth Circuit rejected each basis for the challenge and affirmed the district court's denial of a motion for preliminary injunction. As to compelled speech, the court explained that students can refer to students in other ways, and restrictions on preferred speech in an educational environment is often constitutional. As to viewpoint discrimination, the court reasoned that the school district was entitled to regulate speech that may be harmful and disrupt the academic environment. Similarly, as to overbreadth, the policies prohibit only targeted, pervasive conduct that affects other students' learning environments.

Florida Federal Court: School Employee Plausibly Alleged Sex Discrimination Claims Regarding Self-Referential Pronoun Policy

A Florida federal court previously ruled that a terminated nonbinary teacher who had failed to comply with Florida law mandating that public K-12 employees cannot refer to themselves with preferred pronouns inconsistent with their biological sex lacked standing to pursue their claims. The court, following a recent Supreme Court decision (*Muldrow v. City of St. Louis*) clarifying Title VII employment discrimination standards, reconsidered its previous dismissal of Title VII and Title IX sex discrimination claims, and ruled that an

amended complaint plausibly stated a claim that the challenged pronoun policy discriminates with respect to the terms, conditions, or privileges of employment.

New York Bans Realistic Active Shooter Drills

The New York State Education Department Board of Regents, which oversees K-12 schools in the state, approved a measure which prohibits school districts from running realistic active shooter drills (e.g., using actors or simulating props) during the school day or at school activities. Instead, drills must be "trauma-informed" and conducted in a "developmentally and age-appropriate manner."

Pending U.S. Supreme Court Petitions to Watch:

- **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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