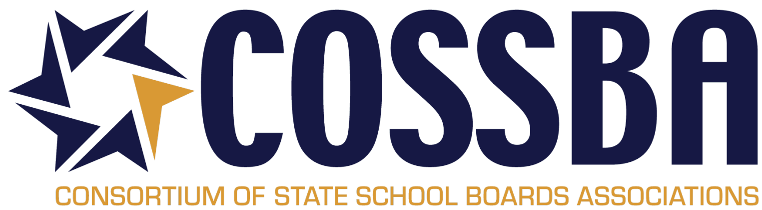

Court Report

Education Law News You Can Use

Eleventh Circuit (AL, FL, GA) Rules Board's Restrictions on Public Comments Unconstitutional

The Brevard County (FL) School Board provides a three-minute public comment period during a designated portion of its board meetings. The board's policies for the public comment period prohibit statements that are "too lengthy, personally directed [to anyone other than the board chair], abusive, obscene, or irrelevant." The board chair enforced this policy at various times against speakers who belong to a parent group called Moms for Liberty. The group asserted both facial and as-applied constitutional challenges to the policies as violative of the First Amendment. The United States Court of Appeals for the Eleventh Circuit held that the board's policies were unconstitutional in the limited public forum that is a school board meeting. First, the policy on "abusive" speech was overbroad and permitted viewpoint discrimination, allowing the presiding officer to silence speech deemed inappropriate without clear guidelines. Second, the "personally directed" restriction was unreasonably vague and arbitrarily enforced, leading to inconsistent application that stifled open dialogue on school matters. Third, the "obscene" speech rule was misapplied and unreasonable as used to prevent speakers from reading excerpts from books available in the school libraries—specifically, the board chair interrupted a speaker reading from a book which detailed an in-school sexual encounter when the speaker read the word "shit."

Sixth Circuit (KY, MI, OH, TN) Affirms Dismissal of Religious Discrimination Claim Against University's Test-or-Vaccinate Policy

In 2021, the University of Kentucky implemented a return-to-campus plan which included mandatory weekly COVID testing for unvaccinated staff and students. A university employee sought a religious exemption, arguing that weekly COVID testing, particularly through nasal swabs, conflicted with her religious obligation to treat her body as a temple, and further contended that the test-or-vaccinate policy was coercive. The university denied her requests for an exemption, but offered less invasive alternatives, such as oral swabs and saliva tests. The employee nevertheless rejected those alternatives, and after receiving multiple notices of noncompliance with the policy, opted to retire at the university's invitation. However, the employee later sued, alleging that the university failed to accommodate her religious beliefs in violation of Title VII of the Civil Rights Act. The United States Court of Appeals for the Sixth Circuit affirmed the grant of summary judgment in favor of the university, finding that the employee failed to demonstrate a genuine conflict between the policy and her religion, particularly because she did not support her objections to the alternative testing methods offered as coercive or invasive. The court emphasized that Title VII requires actual evidence of a religious conflict, not just personal discomfort or moral objections.

Second Circuit (CT, NY, VT) Clarifies States' Right to Sue Schools on Public's Behalf for Failing to Address Harassment

The State of New York, through its attorney general, sued the Niagara-Wheatfield Central School District under claims for negligent supervision and Title IX violations, based on allegations that the school district failed to adequately address multiple complaints of student-on-student sexual assault, harassment, and gender-based bullying. The district court initially dismissed the case, ruling that New York had not sufficiently established standing to sue—New York brought the case under the doctrine of *parens patriae* ("as parent of one's country"), which allows a state to seek to protect a quasi-sovereign interest (e.g., health and well-being) on behalf of its residents. The district court based its dismissal on the conclusion that a state suing in *parens patriae* must establish an injurious policy, custom, or practice against an identifiable group. The United States

Court of Appeals for the Second Circuit reversed, concluding instead that the State needed to demonstrate that the school district's actions, even if involving isolated incidents, had broad, indirect effects on the student body and community. The court found that New York met this standard by alleging multiple cases where the school district's inaction allowed harassment to continue, leading to widespread fear among students and parents that similar issues would not be adequately addressed, therefore affecting a substantial segment of the state's population as necessary to establish *parens patriae* standing.

Oklahoma Teachers Challenge Bible Mandate in Curriculum

This past summer, the Oklahoma State Superintendent of Public Instruction issued a directive requiring schools to incorporate the Bible and the Ten Commandments "as instructional support into the curriculum" across grades 5-12. And last month, the Superintendent announced an intent to spend $3 million in state funds to supply Bibles, while the Oklahoma Department of Education issued a Request for Proposal seeking bids for a contract to provide and ship 55,000 leather-bound King James to all the school districts in the state within two weeks of the contract-award date. A collection of public school teachers, parents, and clergy filed a lawsuit in the Oklahoma Supreme Court, challenging the directive as violating the state constitution for use of public funds to support a religious system and for various procedural and administrative requirements in its implementation.

Lawsuit Targets Scholarship Program for Minority Teachers in Illinois

A nonprofit organization, self-described as "dedicated to challenging distinctions made on the basis of race and ethnicity in federal and state courts," has brought a federal lawsuit challenging a scholarship program in Illinois aimed at increasing diversity among teacher candidates. The program requires applicants to be an Illinois resident and "be a minority student of either African American/Black, Hispanic American, Asian American or Native American origin, or a qualified bilingual minority applicant." The scholarship awards up to $7,500 per year for four academic years at an Illinois institution. The lawsuit claims the program discriminates against non-minorities in violation of the Equal Protection Clause of the Fourteenth Amendment.

Pending U.S. Supreme Court Petitions to Watch:

- **FDA v. R.J. Reynolds Vapor Co.** – Whether a tobacco product manufacturer may file a judicial review petition in a circuit outside of the District of Columbia if the manufacturer is not located in that circuit but is joined by a seller of their products located in that circuit. ***Petition granted.***
- **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.
- **West Virginia Secondary School Activities Commission 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.
- **Boston Parent Coalition v. School Committee for Boston** – Whether an Equal Protection challenge to a facially race-neutral admission criteria is barred because members of the racial groups targeted for decline still receive a balance share of admissions offers.
- **Mahmoud v. Taylor** – Whether public schools burden parents' religious exercise by compelling elementary school children to participate in instruction on gender and sexuality against their parents' religious convictions without notice or opportunity to opt out.

U.S. Supreme Court Cases to Watch:

- **Free Speech Coalition, Inc. v. Paxton**– Whether strict scrutiny or rational basis review applies to a Texas law that restrict minors' access to sexual material but significantly burdens adults' access to protected speech
- **U.S. v. Skrmetti** – Whether Tennessee Senate Bill 1, which prohibits medical treatments intended to allow a minor to identify with a purported identity inconsistent with the minor's sex, violates the Equal Protection Clause (a related petition in L.W. v. Skrmetti asks whether this same bill violates the 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. (Oral argument presented today.)

- **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. (Set for argument tomorrow.)
- **FDA v. Wages and White Lion Investments, LLC** – Whether the FDA's denial of an application for authorization to market new e-cigarette products (including candy and fruit flavors) was arbitrary and capricious.
- **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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