COSSBA
CONSORTIUM OF STATE SCHOOL BOARDS ASSOCIATIONS

Court Report

Education Law News You Can Use

November 2, 2026

U.S. Supreme Court to Review Racial Discrimination Challenge to Maryland Magnet School Admissions Policy

The U.S. Supreme Court has agreed to review a lawsuit challenging admissions policies at four selective public middle school magnet programs in Montgomery County, Maryland. Beginning in 2017, the school district revised its admissions criteria following concerns about racial and socioeconomic disparities in the programs, including by evaluating students' academic performance relative to peers at similarly situated schools rather than relying exclusively on national benchmarks. The district subsequently adopted a lottery-based admissions process that considers academic qualifications and the poverty levels of applicants' elementary schools. An association representing predominantly Asian American families sued the district, alleging that the facially race-neutral policies intentionally discriminated against Asian American students by reducing their admission opportunities. The U.S. District Court for the District of Maryland dismissed the lawsuit, and the U.S. Court of Appeals for the Fourth Circuit affirmed, reasoning that Asian American students continued to receive magnet school placements at rates exceeding their representation in the applicant pool. The Supreme Court granted certiorari to consider whether plaintiffs challenging facially neutral admissions policies as racially discriminatory must demonstrate that the targeted racial group suffered an aggregate disparate impact relative to its share of applicants. The case presents an important question about whether evidence of discriminatory intent can support an equal protection challenge even when the allegedly disadvantaged racial group remains proportionally overrepresented among admitted students. The Court's eventual decision could clarify the constitutional limitations on school districts' use of race-neutral admissions criteria intended to promote diversity.

Ohio Appeals Court Strikes Down Statewide Private School Voucher Program

Ohio established its EdChoice Scholarship Program in 2005 to provide state-funded vouchers for students attending low-performing public schools to enroll in private schools. Over the following two decades, the legislature repeatedly expanded the program, eventually making vouchers available to virtually every Ohio student regardless of household income or the performance of their assigned public school. Several public-school districts, students and a school-funding advocacy organization challenged the program, arguing that it violated the Ohio Constitution's requirement that the state maintain a "thorough and efficient system of common schools." A trial court agreed and declared the program unconstitutional, prompting an appeal by the state and participating families.

Compiled By:

BOSE McKINNEY & EVANS LLP
ATTORNEYS AT LAW

BOSE publicaffairs group

The Ohio Court of Appeals affirmed, holding that EdChoice, as presently structured and funded, unconstitutionally established a competing system of private schools at the expense of the state's public schools. The court emphasized that participating private schools could selectively admit students, were concentrated primarily in urban areas, and operated with substantially less governmental oversight than public schools. It also concluded that the program undermined public-school funding by diverting state resources, increasing the financial burden of educating remaining students and potentially weakening community support for local school tax levies. Although the Ohio Supreme Court previously upheld a more limited voucher program, the appellate court distinguished that decision because EdChoice had expanded far beyond its original scope, with expenditures exceeding $1.4 billion over two fiscal years. The court emphasized that its ruling did not prohibit all school voucher programs and stayed enforcement of its judgment pending an anticipated further appeal.

Second Circuit (CT, NY, VT) Upholds School District's Removal of LGBTQ+ Pride Flags from Classrooms

Three high school teachers in a New York school district sued after administrators directed them to remove LGBTQ+ pride flags and stickers displayed on their classroom walls and doors. The dispute arose after several students expressed discomfort with a large pride flag displayed in a math classroom, prompting the district to enforce an existing policy prohibiting political activities and limiting classroom flag displays to American and New York state flags. The teachers alleged that the district selectively enforced its policy against LGBTQ+ symbols while permitting other displays, including flags associated with academic subjects and school organizations. They argued that the restrictions violated their First Amendment free-speech rights and the Fourteenth Amendment's Equal Protection Clause and constituted employment discrimination under Title VII of the Civil Rights Act. The U.S. District Court for the Eastern District of New York dismissed their claims, and the U.S. Court of Appeals for the Second Circuit affirmed. Applying the Supreme Court's decision in *Garcetti v. Ceballos*, the appellate court held that classroom decorations constitute speech undertaken pursuant to teachers' official duties because teachers are responsible for creating learning environments that support the curriculum. Accordingly, the displays constituted government speech that school districts may regulate without violating teachers' First Amendment rights. The court distinguished classroom decorations from personal expressions, such as wearing a pride flag pin or displaying a photograph of a same-sex spouse, which do not necessarily constitute government speech merely because they appear in a classroom. The court also rejected the teachers' equal protection claims because they failed to plausibly allege that the district acted with discriminatory intent, notwithstanding allegations of inconsistent enforcement. Finally, the court dismissed their Title VII claims because the restrictions did not adversely affect any identifiable term or condition of their employment, such as compensation, responsibilities, or working hours.

Virginia Federal Court Upholds Virginia's In-State Tuition Laws

The United States sued Virginia, challenging two state laws that allow certain students to qualify for reduced in-state tuition at public colleges and universities regardless of their immigration status. Under federal law, states generally cannot provide undocumented immigrants with postsecondary education benefits based on residency unless U.S. citizens are eligible for the same benefits regardless of residency. The federal government argued that Virginia's laws violated this restriction by allowing undocumented students to qualify for in-state tuition through two pathways: one based on establishing domicile in Virginia and another based on attending high school in the state, satisfying certain tax-filing requirements, and enrolling in a Virginia college or university. The U.S. District Court for the Eastern District of Virginia rejected both challenges and granted summary judgment in Virginia's favor. The court reasoned that the domicile-based pathway did not violate federal law because Virginia's implementing regulations expressly exclude undocumented students from eligibility. As for the second pathway, the court concluded that eligibility depended on educational history and tax-filing requirements rather than residency, noting that students who no longer reside in Virginia could still qualify. The court further explained that even if the second pathway were based on residency, federal law would not prohibit it because Virginia offers comparable in-state tuition benefits to certain U.S. citizens who reside outside the state. Accordingly, the court held that neither law was preempted by federal immigration law and dismissed the federal government's lawsuit with prejudice.

Illinois Federal Court Strikes Down Illinois Laws Providing Residence-Based Tuition Benefits to Undocumented College Students

Illinois enacted several laws allowing certain students who are not lawfully present in the U.S. to qualify for in-state tuition, scholarships and other postsecondary education benefits based on their connections to the state, including attendance at and graduation from Illinois high schools. The U.S. challenged those laws, arguing that they violated a federal statute prohibiting states from providing residency-based postsecondary education benefits to individuals not lawfully present in the country unless the same benefits are available to U.S. citizens regardless of their state of residence. Illinois argued that the federal statute unconstitutionally interfered with the state's authority to establish its own education policies and that its programs relied on educational and residency-related criteria rather than residence alone.

The U.S. District Court for the Southern District of Illinois ruled in favor of the U.S., holding that federal law preempted the challenged provisions of Illinois's in-state tuition laws, DREAM Act and Retention of Illinois Students and Equity (RISE) Act. The court reasoned that the federal statute regulates individuals' eligibility for educational benefits rather than requiring states to enact or administer a federal program and therefore does not violate the Tenth Amendment's prohibition against federal commandeering of state governments. The court further concluded that conditioning benefits on Illinois high school attendance and graduation did not avoid federal preemption because residence in Illinois remained a necessary condition for eligibility. Because the challenged programs did not extend the same benefits to U.S. citizens regardless of residency, the court declared the provisions invalid as applied to individuals not lawfully present in the U.S. and permanently enjoined their enforcement. The ruling did not address separate amendments scheduled to take effect in 2027.

U.S. Supreme Court Petitions to Watch:

- *Association for Education Fairness v. Montgomery County Board of Education* – Whether a plaintiff alleging that a school district implemented facially-neutral admissions criteria for a racially discriminatory purpose must show that the criteria produced a disparate impact on the targeted racial group before a court may consider evidence of discriminatory intent. ***Petition granted.***

- *D.A. ex rel. B.A. v. Tri County Area Schools* ("Let's Go Brandon" sweatshirts) – Whether *Bethel School District v. Fraser* (which allowed a school to discipline a student for a school assembly speech filled with sexual innuendo) permits schools to censor nondisruptive political speech that is not plainly profane or lewd. ***Petition denied.***

- *Springfield R-12 School District v. Henderson* – Whether public employees who allege mandatory workplace training chilled or compelled their speech must show that they faced a "certainly impending" adverse consequence for refusing to comply or expressing contrary views, or whether an objectively reasonable fear of such consequences sufficiently establishes standing. ***Petition denied.***

- *Galesburg Community Unit School District No. 205 v. N.T. and P.T.* – Whether, when reviewing an administrative decision under the IDEA, a federal district court may rely on evidence of events occurring after the administrative hearing to reduce the deference owed to the hearing officer's decision and reevaluate the challenged educational decision based on circumstances existing at the time of trial.

- *Nathan v. Alamo Heights Independent School District* – 1) Whether the establishment clause forbids a state from mandating the permanent, conspicuous display of a government-selected version of the Ten Commandments in every public-school classroom; and (2) whether permanently displaying the Ten Commandments in every public-school classroom interferes with parents' free exercise clause right to direct their children's religious education and burdens children's religious freedom.

- *Hudson v. Charleston County School District* – Whether a teacher who repeatedly reports racially and sexually harassing conduct by students sufficiently notifies a school district of a hostile work environment under Title VII, or whether the teacher must also follow specific reporting procedures and expressly communicate that the conduct is offensive.

- *Chichester School District v. S.M.* – Whether courts must consider a school district's efforts to remedy a denial of a free appropriate public education (FAPE), along with other equitable factors, when determining the amount of compensatory education owed to a student.

- *K.M.K. v. Washington Interscholastic Activities Association* (emergency application) – 1) Whether policies allowing transgender girls to participate in girls' school sports violate Title IX's prohibition against sex discrimination; and (2) whether parents have a constitutional right to receive notice and opt their daughters out of athletic competitions against transgender girls without forfeiting their daughters' opportunity to participate in school sports.

- *Bravo v. Dallas Independent School District* – Whether an employee alleging employment discrimination under Title VII must identify a similarly situated employee who received more favorable treatment to survive summary judgment, or whether courts must also consider other circumstantial evidence of discrimination even when no suitable comparator exists.

U.S. Supreme Court Cases to Watch:

- *St. Mary Catholic Parish v. Roy* – Whether a state can attach nondiscrimination requirements (here, requiring Catholic preschools to comply with LGBTQ-inclusive enrollment) as a condition to receiving public funding when those conditions conflict with religious doctrine. (Set for argument 11/3.)

- *Crowther v. Board of Regents of the University System of Georgia* – Whether Title IX provides employees of federally funded educational institutions a private right of action to sue for sex discrimination in employment. (Set for argument 11/30.)