



# 2015 Case Law Update

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November 11, 2015



# Obergefell v. Hodges

- 7/19/13 – case filed
- 7/22/13 – TRO granted
- 9/26/13 – amended complaint
- 12/23/13 – District Court finds that Ohio's refusal to recognize same-sex marriages is unconstitutional.
- 1/16/14 – case is appealed
- 11/6/14 – Court of Appeals reverses
- 11/14/14 – case is appealed
- 6/26/15 – SCOTUS decision



# Obergefell v. Hodges

- **Holding:**
  - Same-sex couples have a fundamental right to marry.
  - State laws that exclude same-sex couples from civil marriage are unconstitutional.
  - No lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state.



# Obergefell v. Hodges

- Review your benefits and policies
  - Health benefits
  - LOA benefits
  - FMLA policies
  - Beneficiary designations
  - HSAs
  - COBRA
  - Dependent care
- “Same-Sex Marriage: What the *Obergefell* Decision means for School Districts” – NSBA



# EEOC v. Abercrombie & Fitch

- Clothing store declined to hire a 17-year old Muslim woman
- Religious headscarf conflicted with ER dress code policy
- Lawsuit claimed violation of Title VII of Civil Rights Act



# EEOC v. Abercrombie & Fitch

- **Issue:** whether an applicant or employee must explicitly request a religious accommodation before an employer may be found liable
- EEOC's arguments:
  - ER should be liable if the employer has an understanding of an individual's religious practice and that understanding is correct
  - Abercrombie's decision not to hire violated Title VII because the company knew why the applicant wore the headscarf, but refused to accommodate her religious practice



# EEOC v. Abercrombie & Fitch

- **Holding:**
  - SCOTUS agreed with EEOC
  - Applicant only needs to demonstrate that applicant's need for an accommodation was a motivating factor in the employer's decision, not that the employer had knowledge of the need.
  - “An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions.”



# EEOC v. Abercrombie & Fitch

- Puts districts in tough spot
  - Must either:
    - Ask questions regarding religious affiliation, which violates discrimination laws
    - Make assumptions about which candidates may need a religious accommodation even when ER doesn't have knowledge of individual's religion or need for accommodation
  - Concerns about stereotyping candidates
  - SCOTUS noted that it's better to have some "awkward conversations" than an applicant not get the job at all





# Wenk v. O'Reilly

- Parent engaged school staff about needs of his 17-year-old special education daughter.
- Father made several unusual demands.
- Two teachers reported to Director of Pupil Services statements made by student about her home interactions with father.
- Director made a report to children services.
- Father sued, asserting that district violated the First Amendment by making the report in retaliation for his advocacy for his daughter.



# Wenk v. O'Reilly

- **Issue:** whether teachers or other school personnel who are mandatory reports are entitled to qualified immunity against First Amendment retaliation claims asserted by the alleged abuser.



# Wenk v. O'Reilly

- Federal district court:
  - Denied administrator's request for qualified immunity
  - Allowed case against Director of Pupil Services to proceed to trial
- Sixth Circuit court of appeals
  - Upheld the denial of qualified immunity and summary judgment
  - **Holding:** a reasonable official would have understood that filing a child abuse report in bad faith violates parent's free speech rights



# Wenk v. O'Reilly

- Appealed to SCOTUS
- OSBA Amicus brief
  - State law immunity exists to protect mandatory reporters when reasonable grounds exist to suspect abuse
  - Should not expose mandatory reporters to federal claims for retaliation based on alleged abuser's prior exercise of free speech rights
- Parties settled September 24
- Decision places school officials in a difficult position



# G.G. v. Gloucester Cnty Sch. Bd.

- Transgender boy allowed to use boys' restroom.
- Principal then informed G.G. that he could no longer use the boys' restroom.
- G.G. filed suit, challenging policy under Title IX.



# G.G. v. Gloucester Cnty Sch. Bd.

- Title IX
  - Prohibits discrimination based on sex in educational programs that receive and utilize federal financial assistance
  - DOJ and DOE/OCR filed a joint statement of interest, asserting that board's policy violated Title IX



# G.G. v. Gloucester Cnty Sch. Bd.

- **Holding:** Title IX claim was precluded by US DOE regulations.
- 34 CFR 106.33
  - Allows schools to provide separate bathroom facilities based upon sex, so long as the bathrooms are comparable
  - “Sex” includes biological sex. Court didn’t decide whether “sex” also included gender identity.
  - Girls’ restrooms weren’t incomparable to those provided for individuals who are biologically male.
- G.G. failed to state a claim under Title IX



# Alboniga v. Sch. Bd. of Broward Cty.

- A.M. has multiple disabilities and used service dog to alert to impending seizures.
- District required proof of vaccinations, proof of insurance and a dog handler.
- Lawsuit alleged district violated ADA and §504 by failing to accommodate A.M.'s disability.





# Alboniga v. Sch. Bd. of Broward Cty.

- ADA failure to accommodate claim:
  - Qualified individual with disability
  - Excluded from participation or denied the benefits of a public entity's services, programs or activities, or was otherwise discriminated against by the public entity
  - Exclusion, denial of benefit or discrimination was by reason of the person's disability



# Alboniga v. Sch. Bd. of Broward Cty.

- **Holding:** district's policies violated the ADA and section 504
- Paying for vaccinations in excess of vaccinations required under state law amounted to a surcharge in violation of federal disability law
- Requiring parents to insure dog and indemnify the school, placed a burden on parents that is not placed on parents of non-disabled students.



# Alboniga v. Sch. Bd. of Broward Cty.

- District argued district educators were providing same services as the dog.
- “Refusing plaintiff’s requested accommodation... is akin to allowing a public entity to dictate the type of services a disabled person needs in contravention of that person’s own decisions regarding his own life and care.”
- District required to allow the dog to attend school with A.M. and assist or monitor A.M. in using his service animal.



# Hope Academy v. White Hat

- Governing boards of 10 community schools signed a contract with White Hat management to operate and manage the schools.
- State provided funding to schools and schools paid 95% to White Hat.
- White Hat ran the day-to-day operations of the schools.
- Schools sued White Hat



# Hope Academy v. White Hat

## **PUBLIC FUNDS:**

- School's argument:
  - Operating a community school is a government function. White Hat should be accountable for how it uses public funds.
  - White Hat may make a profit, but only after it meets its obligations under the contract and the law.
- White Hat's argument:
  - The funds were no longer public once paid to White Hat.



# Hope Academy v. White Hat

## PUBLIC FUNDS:

- **Holding:** private entity like White Hat engaged in the business of providing education is accountable for the manner in which it uses public funds.



# Hope Academy v. White Hat

## **PURCHASING AGENT:**

- Schools' argument:
  - Funds designated for educating public school students must be used for the benefit of the schools.
  - When management organizations use funds to purchase materials, they are acting as a purchasing agent for the schools and those purchases are school property.
- White Hat's argument:
  - The company took on all costs and financial risks to run the schools.
  - Contracts indicate that White Hat owns the property it purchased.



# Hope Academy v. White Hat

## PURCHASING AGENT:

- **Holding:** Contract language required property titled in White Hat's name to transfer to schools at end of contract only if the school bought back the items at a specific rate from White Hat.
- Bad contract language, but was agreed-upon language.





# Hope Academy v. White Hat

## FIDUCIARY RELATIONSHIP:

- Schools' argument:
  - A private entity that operates a community school has a fiduciary relationship with the school.
- White Hat's argument:
  - Company is an independent contractor.
  - No evidence shows that White Hat intended to enter into a fiduciary relationship with the schools.



# Hope Academy v. White Hat

## FIDUCIARY RELATIONSHIP:

- **Holding:** because White Hat agreed to act on behalf of the schools to help them carry out their purpose, advance the schools' interests and operate “all functions” of their day-to-day operations, a fiduciary relationship was created



# Other cases to note...

- *Stewart v. Lockland*
  - **Issue**: whether dismissed EE has ability to require BOE to discuss his dismissal in public session
  - **Holding**: EE can only prohibit public body from holding an executive session when EE is statutorily entitled to a hearing



# Other cases to note...

- *Youngstown City School Dist. Bd. of Edn. v. State of Ohio*
  - **Issue**: whether the general assembly violated the Ohio constitution by failing to read HB 70, *as amended*, three times
  - Motion for Preliminary Injunction
  - **Holding**: HB 70 maintained a “common purpose” from its introduction through its enactment and complied with the purpose of three-reading rule



# Other cases to note...

- *State ex rel. Allen v. Bd. of Educ. Southington Local School Dist.*
  - **Issue**: whether BOE was permitted to sell real property valued over \$10k to a township for less than half that amount
  - RC 3313.41
  - **Holding**: school board acted w/in its discretion and did not act contrary to RC 3313.41



# State cases to watch in 2016

- *Toledo et al. v. ODE*  
**Issue:** whether districts have vested rights in their state funding levels that preclude the general assembly from reallocating state funds (**LAF case**)
- *Talawanda v. Ohio Dept. of Taxation*  
**Issue:** whether district real property is required to be used exclusively for a public purpose in order to qualify for an exemption from real property taxation (**LAF case**)



# State cases to watch in 2016

- *School Choice Ohio v. Springfield*  
**Issue:** whether school districts may adopt policies allowing them to distinguish to whom a student's directory information is released (**LAF case**)
- *Boone Construction v. Village of Piketon*  
**Issue:** whether liquidated damages clauses are valid and enforceable in public construction contracts (**LAF case**)



# State cases to watch in 2016

- *White v. King*

**Issue:** whether Ohio's Sunshine Laws apply to the exchange of emails by public bodies





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