



2016 Case Law Update

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Title IX - Transgender

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

-Title IX



Title IX - Transgender

- Dear Colleague Letter – May 13, 2016
- Departments' stance:
 - A student's gender identity is a student's sex for purposes of Title IX.
 - A school must not treat a transgender student differently from the way it treats other students of the same gender identity.



G.G. v. Gloucester Cnty. School 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 lawsuit, challenging policy under Title IX.
- Issue: whether Title IX requires schools to provide transgender students access to restrooms congruent w/gender identity.



G.G. v. Gloucester Cnty. School Bd.

- District court
 - Dismissed G.G.'s Title IX claim and denied request for a preliminary injunction
 - Claim was precluded by DOE regulations
 - Allows schools to provide separate bathroom facilities based upon sex, so long as bathrooms are comparable
 - “Sex” includes biological sex. Court didn’t decide whether “sex” also included gender identity.



G.G. v. Gloucester Cnty. School Bd.

- 4th Circuit Court of Appeals:
 - Holding: school must treat transgender students consistent with their gender identity
 - Court gave deference to DCL
 - Appealed to U.S. Supreme Court
 - August – SCOTUS granted an “emergency” stay to prevent G.G. from using boys’ restroom



State of Texas v. USA

- Plaintiffs are 13 states
- Suing DOE, DOJ, DOL, EEOC and various agency officials
- Issue: did the fed'l gov't follow the proper legal procedures before issuing the guidelines?



State of Texas v. USA

- Administrative Procedure Act (APA)
 - Governs how federal agencies may proposed and establish regulations.
 - Requires agencies to:
 - Keep public informed of their rules (notice)
 - Provide for public participation (comment)
 - Not required for "interpretive rules" and statements of agency policy



State of Texas v. USA

- Holding: guidelines are legislative and should have complied with APA
- Plaintiffs are legally affected in a way they were not before the guidelines were issued.



State of Texas v. USA

- Prohibits the U.S. Government from:
 - Enforcing the guidelines against the named plaintiffs in the suit
 - Initiating, continuing or concluding any investigation based on the U.S. government's interpretation that “sex” includes gender identity
 - Asserting that their guidance carries any weight in litigation on or after August 21.



Highland Local v. U.S. Dep't of Edn.

- Transgender girl student enrolled at Highland Elementary School.
- District denied parents' request to permit her to use girls' restroom and change the records to reflect her female name.
- OCR resolution agreement:
 - Grant her access to facilities consistent with her gender identity
 - Engage a third-party consultant



Highland Local v. U.S. Dep't of Edn.

- District filed motion for preliminary injunction, asking court to enjoin federal gov't from enforcing DCL
- Student intervened and filed motion for preliminary injunction, asking court to require district to treat her as a girl



Highland Local v. U.S. Dep't of Edn.

- Holding: district required to treat student “as the girl she is, including referring to her by female pronouns and her female name and allowing her to use girls’ restroom”
- Court found it lacked jurisdiction over district’s complaint.



White v. King

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



White v. King

- Trial court:
 - Individual board members have immunity and are entitled to judgment on the pleadings
 - Granted board's mx for judgment on the pleadings
- Appellate court:
 - Affirmed trial court's decision

White v. King, 2016-Ohio-2770



White v. King

- On appeal, White argued that under RC 121.22:
 - Private deliberations concerning official business are prohibited regardless of format
 - When a board formally votes to ratify a prior action, the ratified action constitutes “official business”



White v. King

- The Board argued:
 - The law does not apply to emails
 - Discussions about a response to a newspaper editorial do not involve public business
 - Only private discussions on a pending rule or resolution are a violation
 - The decision to later ratify does not convert the emails into a discussion of public business



White v. King

- **Holding:** Any private prearranged discussion of public business by a majority of the members of a public body is prohibited, regardless of whether the discussion occurred face-to-face, electronically by email, text, tweet or other form of communication.



White v. King

- Dissent:

- While it may be a good idea to limit the use of email, that task is for the General Assembly
- The emails in this case are not encompassed within the current statutory definition of “meeting”



Public Records

- Options for denial of access:
 - Mandamus action
 - Alternative, expedited complaint process
 - SB 321 (eff. 9/26/16)



Public Records

- File complaint with clerk of court of claims or common pleas
 - Attach copy of original records request and any written responses
- Special Master assigned to the case
 - Referred to mediation
 - Special Master report and recommendation



Public Records

- Objections to special master's report and order
 - Sent to the court of claims or common pleas
- Appeal from final order or order dismissing the complaint
 - Sent to the court of appeals



Q.W. v. Bd. of Edn. of Fayette County

- **Issue:**

Whether the school district must consider social and behavioral deficits that were not shown to interfere with his school board performance to determine his “educational performance”?

Q.W. v. Bd. of Edn. of Fayette County, 630 Fed.Appx. 580 (6th Cir. 2015)



Q.W. v. Bd. of Edn. of Fayette County

Background:

- Student with autism was educated under an IEP in Fayette County, KY
- School district made an administrative decision to discontinue special education services based on student's "educational performance."



Q.W. v. Bd. of Edn. of Fayette County

“Autism” is a learning disability
"significantly affecting verbal and
nonverbal communication and social
interaction . . . that adversely affects a
child's educational performance." [34
C.F.R. 300.8(c)(1)(i)]



Q.W. v. Bd. of Edn. of Fayette County

- **Holding:** “Educational performance” may incorporate more than academic achievement, but does not include the child’s behavior at home and in the community.

Domingo v. Kowalski, 810 F.3d 403 (2016)



Domingo v. Kowalski

- Issue:

Does a teacher's use of force deny her students' due process rights?

Domingo v. Kowalski, 810 F.3d 403 (2016)



Domingo v. Kowalski

Background:

- 14th Amendment Due Process claim brought by three special education students and their parents
- Students and parents allege teacher abused her students by gagging a student with a bandanna, strapping another to a toilet, and forcing a third to sit on a training toilet in view of her classmates.

Domingo v. Kowalski, 810 F.3d 403 (2016)



Domingo v. Kowalski

6th Circuit adopted the 3rd Circuit's test from *Gottlieb v. Laurel Highlands School District* to determine whether the teacher's actions amounted to abuse that "shocks the conscience."



Domingo v. Kowalski

1. Was there a pedagogical justification for the use of force?
2. Was the force excessive to meet the legitimate objective?
3. Was the force applied in a good faith effort to maintain or restore discipline or was it malicious and sadistic for the purpose of causing harm?
4. Was there a serious injury?



Domingo v. Kowalski

- **Holding:**

While teacher's actions were "offensive," "unorthodox," and "insensitive," and "improper," they were not a violation the students' constitutional rights.

Domingo v. Kowalski, 810 F.3d 403 (2016)



Greenwich Bd. of Edn. v. G.M.

- **Issue:**

Whether a district failed to provide a FAPE when it cut off the disability review process of a student.



Greenwich Bd. of Edn. v. G.M.

Background:

The Greenwich Board of Education (board), appealed the decision of an independent hearing officer (IHO) that a student was eligible for special education, that the board erred in denying the parents' request for special education without evaluating the student, and that the parents were entitled to reimbursement for the cost of the student's education at a specialized instruction private school.



Greenwich Bd. of Edn. v. G.M.

To determine whether parents are entitled to reimbursement for private placement, the Court applied the *Burlington/Carter* test:

1. Will the school district's plan provide the child with a FAPE?
2. If not, is the private placement appropriate to the child's needs?
3. Is ordering the reimbursement equitable?



Greenwich Bd. of Edn. v. G.M.

- **Holding:** The district failed to adhere to the Child Find obligation of the IDEA, which amounted to a denial of FAPE.
- “[T]he Board’s refusal to evaluate [the student] not only impeded Parents’ opportunity to participate in the decision-making process, it foreclosed them from accessing the process at all, a process to which they were entitled.”



Greenwich Bd. of Edn. v. G.M.

Footnote 22:

- Discussing the second prong of Burlington/Carter, whether the private placement was appropriate, the Court waded into whether the education must be “specially designed” or “specifically designed” to meet the needs of the child.
- The court concluded that the proper standard was “specially” from the Supreme Court’s usage in *Bd. of Educ. v. Rowley*, 485 U.S. 175 (1982).



Maple Hts City BOE. v. A.C.

- **Issue:**

Whether a state level hearing officer properly gave deference to the independent hearing officer's assessment of witness credibility.



Maple Hts City BOE. v. A.C.

Background:

- School district determined that a student's theft and drug possession were not a manifestation of her disability, but were the result of social maladjustment.
- IHO found that parent provided sufficient evidence to demonstrate that the behaviors were a manifestation of the student's disability. The SLRO agreed.



Maple Hts City BOE. v. A.C.

The IHO determined the credibility of the district's and parents' competing witnesses and ultimately sided with the parent's expert, providing "ample support and justification" for her determination. The SLRO upheld the IHO's findings.

The Court affirmed the SLRO's decision, stating that she properly gave deference to the IHO in matters of assessing witness credibility and demeanor.



Maple Hts City BOE. v. A.C.

“The IHO had an opportunity to observe [the district’s expert] and found that [the expert’s] demeanor, her failures to identify the errors in calculating the data in A.W.’s behavior chart, and to accurately describe the trends depicted by that data, led the IHO to discredit her testimony.”



Cases to watch

US Supreme Court:

Fry v. Napoleon Public Schools - Must parents exhaust administrative avenues under IDEA before filing suit under ADA or Rehab Act? (service dog) [Oct. 31 arguments]

Endrew F. v. Douglas Co. School Dist. –What level of educational benefit (some v. meaningful) is necessary to establish FAPE?



Outcome of last year's cases to watch

- *Toledo et al. v. ODE*, 146 Ohio St.3d 356, 2016-Ohio-2806

Holding: Retroactivity clause does not protect political subdivisions. GA has constitutional authority to adjust school funding retroactively.



Outcome of last year's cases to watch

- *Talawanda v. Ohio Dept. of Taxation*, 145 Ohio St.3d 108, 2015-Ohio-5450

Holding: District qualifies for an exemption from real property taxation for its property even if the property is not used exclusively for a public purpose.



Outcome of last year's cases to watch

- *Boone Construction v. Village of Piketon*, 145 Ohio St.3d 450, 2016-Ohio-628
- **Holding**: Supreme Court applied contractual liquidated damages provisions to public works contracts.



Questions?

**OSBA's legal hotline
is available to
member districts.**

855-OSBA-LAW





Questions?

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