Supreme Court and Federal Regulation

AASA Legislative Advocacy Conference

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July 10, 2018
Agenda

- **U.S. Supreme Court Update**
  - Teachers’ Unions
    - *Janus v. American Federation of State, County, and Municipal Employees, Council 31 (AFSCME)*
  - State Taxation
    - *South Dakota v. Wayfair, Inc.*
  - First Amendment
    - *Lozman v. City of Riviera Beach, Florida*
  - Immigration
    - *Trump v. Hawaii*
  - Justice Kennedy
    - Notable Opinions
    - Who will be his successor?

- **Transgender Student Rights**
- **New Department of Education Office of Civil Rights (OCR) Case Processing Manual**
- **Regulations**
  - Assistance to States for Education of Children with Disabilities Guidance
  - President Trump’s Office for Civil Rights Rescinds Obama-era Guidance on Race-Conscious Admission Policies

- **Wrap up/Questions**
U.S. Supreme Court Update
SCOTUS – A High-level Look

- Nine justices serve lifetime appointments following nomination by the President and confirmation by the Senate.

- The current justices are:
  - Chief Justice John Roberts, Associate Justice Clarence Thomas, Associate Justice Ruth Bader Ginsburg, Associate Justice Samuel Alito, Associate Justice Sonia Sotomayor, Associate Justice Elena Kagan, Associate Justice Neil Gorsuch.
  - There is one seat left vacant by Justice Kennedy.

- The Court decides to hear cases when at least four of the nine justices vote to grant the Petition for Certiorari (this happens less than 90 times out of 7,000+ requests).

- The Court hears oral arguments on cases from October through April, where each side’s attorney is allocated a half hour for oral arguments.
Teachers’ Unions
You are a teacher at a public school. While you are not a member of the teachers’ union, you are required to pay an agency fee that supports the basic functioning of the union. But you disagree with the union’s policy positions and collective bargaining tactics. Is it a violation of your free speech rights to be required to pay the agency fee?
Janus v. AFSCME
Ripped from the headlines

Teachers Seek Return of Union Fees in Wake of SCOTUS ‘Janus’ Decision

A class action suit filed this week in the Central District of California is among the first filed since the U.S. Supreme Court issued its pivotal ruling on union fees.

Is This Supreme Court Decision The End Of Teachers Unions?

June 27, 2018 · 10:39 AM ET
Heard on All Things Considered

After Janus Ruling, Teachers Are Suing for Return of Fees They've Paid Their Unions

By Sarah Schwartz on July 3, 2018 4:46 PM
Janus v. AFSCME

- Janus is employed by the Illinois Department of Healthcare and Family Services.
- The employees in his union are represented by AFSCME.
- Janus refused to join the Union.
- Despite his non-membership, Janus was required to pay a $44.58 monthly agency to AFSCME (Illinois and 22 other states + D.C. permit unions to charge these fees).
- Janus disagrees with the policy positions of the Union and believes that the Union’s behavior in collective bargaining contributed to Illinois’ current fiscal crises.
- Under Illinois law, public employees are required to pay the fee whether they choose to join the union or not, and regardless of their views of the union’s policy positions.
Question presented at Supreme Court: When a Illinois law requires public employees to subsidize a union, even if they choose not to join and strongly oppose the position the union takes in collective bargaining and related activities, does this violate the free speech rights of those employees?

Holding: Yes; Illinois extraction of agency fees from non-consenting public-sector employees violates the First Amendment. Abood v. Detroit Bd. of Ed. is overruled.

Reasoning: The arrangement compels non-members to subsidize private speech on matters of substantial public concern.
What does Janus v. AFSCME mean for schools?

- Will affect unions in 22 states.
- Teachers’ unions cannot collect fees for collective bargaining from workers who decline to join the union.
- Workers must affirmatively “opt-in” before fees can be taken by the Union out of their paychecks.
- There is a class-action lawsuit in California where California non-union teachers are seeking repayment of fees previously paid to their union.
- Teachers’ unions are predicting sizeable membership losses.
- Lawmakers in about a half-dozen states have introduced or passed legislation that seeks to protect unions from the decision. For example, several states have enacted laws that require schools to allow teachers’ unions to meet with new teachers, so labor representatives can pitch the unions’ services.
State Taxation
Hypothetical

You are a representative in the state legislature. You have noticed that e-commerce has increased significantly but your state does not currently collect taxes from those sellers. You decide to author a bill requiring sellers who do not have a physical presence in the state to remit sales tax just like sellers that do have a physical presence in the state. The bill passes and the governor signs the bill. One of the online sellers decides to sue the state. Will your bill survive a legal challenge?
South Dakota v. Wayfair, Inc.
Ripped from the headlines

Will a New Supreme Court Decision Change Online Shopping?
The Court just ruled that a state can collect taxes from a retailer that doesn’t have a physical presence in the state. Here’s what that means.

ALANA SEMUELS JUN 21, 2018

Opinion

Supreme Court’s Wayfair Decision Will Hurt Online Shopping

By Jessica Melugin
Ms. Melugin researches technology issues for the Competitive Enterprise Institute.
June 21, 2018

Opinion

The Supreme Court decision that will put more taxes on internet sales is good news for you
South Dakota v. Wayfair, Inc.

- The Dormant Commerce Clause of the U.S. Constitution prohibits states from imposing excessive burdens on interstate commerce without congressional approval.

- Consistent with this doctrine, in 1967, the U.S. Supreme Court held that a state cannot require an out-of-state seller with no physical presence within that state to collect and remit taxes for good sold or shipped into the state.

- The South Dakota Legislature passed a law requiring sellers of “tangible personal property” in that state who do not have a physical presence in the state to remit sales tax according to the same procedures as sellers who do have a physical presence.
South Dakota v. Wayfair. Inc.

- Question presented at Supreme Court: Does the Dormant Commerce Clause prohibit states from requiring sellers with no physical presence in the state to collect and remit sales tax for goods sold within the state?

- Holding: No; a state may require sellers with no physical presence in the state to collect and remit sales tax for goods sold within the state.
South Dakota v. Wayfair, Inc.

Reasoning:

- The physical presence rule of past Court precedent is not a necessary interpretation of the requirement that a state tax must be “applied to an activity with a substantial nexus with the taxing state.”

- Physical presence is an outdated proxy for “substantial nexus” and the Court’s due process doctrine provides other methods of establishing whether a seller has a substantial nexus to the state.

- Prior Court precedent put businesses with a physical presence at a competitive disadvantage relative to remote sellers.

- Prior Court precedent imposed “the sort of arbitrary, formalistic, distinction that the Court’s modern Commerce Clause precedents disavow.”
What does South Dakota v. Wayfair, Inc. mean for schools?

- The decision frees states to collect from online retailers, which could boost the coffers of states as well as school districts.

Per AASA’s amicus brief:

“State and local governments lost an estimated $26 billion in sales and use tax revenue in 2015 because they were unable to effectively collect owed taxes. . . . the physical nexus requirement results in a loss of crucial revenue from owed taxes that State and local governments depend on to fund basic government functions.”
First Amendment
Hypothetical

You are a member of the local school board. There is a school board meeting tonight. The school board is discussing whether the superintendent should receive a raise. During the public comment period of the meeting that night, a teacher stands up and voices opposition to the superintendent receiving a raise. The board then votes to approve the raise. The teacher gets up again to express opposition to the raise. A school board security officer asks the teacher to leave the meeting. The teacher complies, but the security officer still arrests the teacher. Can the teacher make a retaliatory arrest claim under the First Amendment?
Lozman v. City of Riviera Beach, Florida
Ripped from the headlines

Louisiana teacher handcuffed, arrested after bringing up brass salary at school board meeting


Protester arrested after outburst at City Council meeting in National City
Lozman v. City of Riviera Beach, Florida

- Lozman was a resident of the City of Riviera, where he opposed the City’s plan to utilize eminent domain to redevelop the Riviera Beach Marina.
- Lozman filed a suit against the City after the development plan was approved.
- Lozman attended a regularly scheduled city council meeting and was granted permission to speak during the non-agenda public comment portion of the meeting.
- When it was his turn to speak, he attempted to begin discussing corruption in local government, and a councilmember instructed him to discontinue his comments on that topic.
- Lozman repeatedly ignored the instruction and the councilmember instructed a City police officer to arrest Lozman. The prosecutor found probable cause for the arrest but dismissed the charges.
Lozman v. City of Riviera Beach, Florida

- Question presented at Supreme Court: Does the establishment of probable cause defeat a First Amendment retaliatory arrest claim as a matter of law?

- Holding: No; the existence of probable cause for Lozman’s arrest for disrupting a city council meeting did not bar his First Amendment retaliatory arrest claim under the circumstances of this case.
Lozman v. City of Riviera Beach, Florida

- Reasoning:
  - The Court decided that it does not need to decide which prior Court precedent applies in a broad sense because the facts of the case are so unusual in the retaliatory arrest context.
  - There are core First Amendment values at stake.
Controversy at school board and other public meetings is not uncommon. This year a teacher was escorted out of a school board meeting and arrested after questioning the raise of a superintendent.

School boards should be mindful that actions taken at school board and other public meetings can have First Amendment consequences.
Immigration
Hypothetical

The President of the United States issues an Executive Order that suspends the entry of foreign nationals from 7 predominately Muslim countries? Does the President have the authority to do this? Does it violation the Establishment Clause of the U.S. Constitution?
Trump v. Hawaii
Ripped from the headlines

Lawyers Mobilize at Nation’s Airports After Trump’s Order

Supreme Court upholds Trump travel ban

Federal appeals court upholds block of Trump travel ban
The Trump Administration suspended entry via executive order for 90 days of foreign nationals from 7 countries identified by Congress or the Executive as presenting heightened terrorism-related risks. Executive Order 1 (EO-1) was challenged in federal district court and the judge issued a nationwide temporary restraining order enjoining enforcement of several of EO-1’s provisions. The 9th Circuit denied the government’s motion to stay the order pending appeal. Instead of litigating the matter further, the government announced that it would revoke that order and issue a new one.

A section of the second Executive Order (EO-2) directed that entry of nationals from 6 of the 7 countries designated in EO-1 be suspended for 90 days from the effective date of the order. EO-2 was subject to litigation as well.
The Administration issued a memorandum to executive branch officials declaring the effective date of each enjoined provision of EO-2 to be the date on which the injunctions in these cases “are lifted or stayed with respect to that provision…”

The government sought review in both cases.

The Supreme Court granted to government’s applications for a stay of the preliminary injunction of certain section of EO-2. The Supreme Court also granted cert.

The same day EO-2 was expiring, the Administration issued a Proclamation restricting travel to the U.S. by citizens from 8 countries. The proclamation was challenged in federal court. The 9th Circuit struck down the Proclamation, and the Supreme Court granted cert.
Question presented at Supreme Court: Does the president have statutory authority to issue the Proclamation and does it violate the Establishment Clause of the Constitution?

Holding: The Proclamation is a lawful exercise of the president’s statutory authority and does not violate the Establishment Clause.
Reasoning

Statutory Power

The proclamation does not exceed any statutory power of the president because the president has “broad discretion” to suspend the entry of non-citizens into the U.S. under Section 1182(f) of the Immigration and Nationality Act (INA).

The Proclamation does not violate Section 1152(a)(1)(A), which bars discrimination based on nationality in the issuances of visas. While that section prohibits discrimination, it does not limit the president’s authority to block the entry of nationals of some countries, just as several other presidents have done before President Trump.
Reasoning

Establishment Clause

On its face, the Proclamation did not favor or disfavor any particular religion. But even looking behind the face of the Proclamation, the majority found that the facts that many majority-Muslim countries were not subject to restrictions and that some non-majority-Muslim were subject to the restrictions supported the government’s contention that the Proclamation was not based on anti-Muslim animus and was instead based on “a sufficient national security justification.”
What does Trump v. Hawaii mean for schools?

- Entry restrictions may keep international students, teachers, and scholars out of the United States.
- The potential for immigration enforcement at school continues to be an important issue for school districts, given the obligation of school districts to educate students regardless of immigrant status under Plyler v. Doe (1982).
Justice Kennedy
About Justice Kennedy

- Justice Kennedy attended Stanford University and Harvard Law School.
- Justice Kennedy was nominated and confirmed to the 9th Circuit under President Ford in 1975.
- President Ronald Reagan nominated Justice Kennedy to the Court in 1987.
- Justice Kennedy was appointed in 1988.
- At the end of June, Justice Kennedy announced his retirement.
Select Notable Opinions

- **Parents Involved in Community Schools (PICS) v. Seattle School District No. 1 (2007)**
  - Consolidated case involving race-conscious student assignment plans from Seattle and Kentucky.
    - Seattle plan: allowed students to apply to any high school in the District; second most important tie breaker was a racial factor intended to maintain diversity.
    - Kentucky plan: required all non-magnet schools to maintain a minimum black enrollment of 15%, and a maximum black enrollment of 50%. Students are assigned a “resides” school. Elementary “resides” schools are grouped into clusters. Decisions to assign students to schools within each cluster are based on available space within the schools and racial guidelines in the students assignment plan.

- Kennedy was the swing vote.
- Kennedy ruled that school districts have a compelling interest in diversity but that neither plan was “narrowly tailored.”
- However, Kennedy also found (along with Breyer, Stevens, Souter, and Ginsburg) that compelling interests exist in avoiding racial isolation and promoting diversity.
Parents Involved in Community Schools (PICS) v. Seattle School District No. 1 (2007)

Per Justice Kennedy’s Concurrence:

“A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue. Likewise, a district may consider it a compelling interest to achieve a diverse student population. Race may be one component of that diversity, but other demographic factors, plus special talents and needs, should also be considered. What the government is not permitted to do, absent a showing of necessity not made here, is to classify every student on the basis of race and to assign each of them to schools based on that classification.”
Fisher v. University of Texas at Austin (2016) (Fisher II)

Fisher, a white female, applied for admission to the University of Texas but was denied. She did not qualify for Texas’ Top Ten Percent Plan, which guarantees admission to the top ten percent of every in-state graduating high school class. For the remaining spots, the University considers many factors including race. Fisher sued the University.

Justice Kennedy authored the majority opinion and held that the University’s use of race as a consideration in the admissions process did not violate the Equal Protection Clause of the 14th Amendment of the U.S. Constitution.
Justice Kennedy’s Notable Opinions

- Justice Kennedy wrote the majority opinion which held that a Texas statute making it a crime for two persons of the same sex to engage in certain sexual conduct violates the Due Process Clause of the U.S. Constitution.

- Justice Kennedy wrote the majority opinion which held that the 14th Amendment of the U.S. Constitution requires states to license a marriage between same-sex couples.
Who will replace Justice Kennedy?
Judge Brett Kavanaugh

- Served as a law clerk for the following: Judge Walter King Stapleton on the 3rd Circuit Court of Appeals, Judge Alex Kozinski on the 9th Circuit Court of Appeals, and Associate Justice Anthony Kennedy.
- Judge Kavanaugh was White House Staff Secretary during the Bush Administration.
- In 2006, Judge Kavanaugh was nominated by President George W. Bush to the D.C. Circuit Court of Appeals.
Judge Brett Kavanaugh

- **Hester v. District of Columbia** (2007)
  - Kavanaugh wrote an opinion that ruled against a student who sought compensatory special education services from D.C. public schools for the time he spent incarcerated in Maryland. The school system agreed to provide the services for the student while in prison, but Maryland prison officials refused to allow them and provided their own services. After his release, the student sought the services from the D.C. school system.

- **Adeyemi v. District of Columbia** (2008)
  - Kavanaugh wrote the opinion that ruled against a deaf man who sued the D.C. schools for disability discrimination after he was passed over for an information technology job. In 2002, the school abolished its existing employment positions and required current staff members to re-apply for jobs. Adeyemi was an outside candidate who told interviewers that he could do the job by using writing as his basis of communication. The school system kept five existing staff members for the information technology jobs and turned to applicants for a higher-level position to fill two other vacancies.
Transgender Student Rights
You are a principal of a school. You have a transgender student who wants to use the restroom that matches the gender with which they identify. The student says you are required by federal law to permit her to use the restroom she wants. Are you?
Ripped from the headlines

Transgender teen gets ‘permanent’ access to boys’ locker room in legal settlement

3rd Circ. Upholds Boyertown School District's Transgender Bathroom Policy

In a highly anticipated decision following a May hearing, the U.S. Court of Appeals for the Third Circuit said in its opinion released Tuesday that transgender students in a Montgomery County school district may continue using bathrooms and locker rooms that match their gender identities.

By P.J. D’Annunzio | June 19, 2018 at 07:31 PM
Gloucester County School Board v. G.G.
The District enacted a policy that requires students to use restroom and locker rooms that match their sex assigned at birth.

In June 2016, G.G. sued the District arguing that the policy violated his rights under the U.S. Constitution and Title IX.

District court initially rejected G.G.’s Title IX claim, finding it was barred by ED’s Title IX regulations that allow schools to provide “separate toilet, locker room, and shower facilities on the basis of sex”.

A divided panel of U.S. Court of Appeals for the 4th Circuit reversed district court’s decision.

The 4th Circuit relied on a January 2015 Dear Colleague Letter (DCL) from Department of Education’s Office for Civil Rights (OCR) (the letter was issued after the district court’s decision).
Gloucester County School Board v. G.G.

- School board appealed, asking the Supreme Court to hear the case; oral argument initially scheduled for March 28, 2017.

- On February 22, 2017 Trump Administration (ED and DOJ) issued a new DCL to “withdraw and rescind” the March 2016 DCL in which the Obama Administration set forth its interpretation of Title IX.

- On March 6, 2017 Supreme Court vacated and remanded case to the 4th Circuit for further consideration in light of ED and DOJ’s Feb. 22 guidance.

- In August 2017, G.G. filed an Amended Complaint.

- In May 2018, the district court denied the District’s motion to dismiss the Amended Complaint.

- In June 2018, the district court granted the District’s interlocutory appeal which asks the 4th Circuit to resolve whether the ban is discriminatory.
Despite the rescission of the Obama-era guidance on Title XI, the district court denied the motion to dismiss and held that G.G. “may bring a Title IX claim based on his transgender status” and “has sufficiently pled a Title IX claim of sex discrimination under a gender stereotyping theory.”

The court also declined to dismiss G.G.’s Equal Protection Claim because G.G. “sufficiently pled that the Policy was not substantially related to protecting other students’ privacy rights...” and the District’s argument that the policy did not discriminate against any one class of students was “resoundingly unpersuasive.”
What does Gloucester mean for schools?

- The Supreme Court has yet to rule on the specific issue: whether prohibiting students from using the bathroom of their gender identity is a violation of Title IX and the Equal Protection Clause of the 14th Amendment.
- This is an area of significant lower court litigation. For example . . . .
Hobaugh v. Montana
Hobaugh v. Montana

- Plaintiffs are challenging a proposed state-wide ballot initiative that would require individuals to use public facilities, including locker rooms and bathrooms, that correspond to the sex on their birth certificate.

- In May 2018, a Montana district court heard arguments.
Parents for Privacy v. Dallas School District No. 2
A lawsuit was filed in federal court in Oregon that challenges the policy of the Dallas School District to allow students to use the bathrooms and locker rooms that best fit their gender identity, regardless of sex.

The group of school parents who brought the suit argue that the transgender-inclusive policy is illegal because Title IX only applies to discrimination based on biological sex, not cases where a student’s gender identity differs from biological sex.
Doe v. Boyertown
The Boyertown Area School District implemented a policy that permitted students to use the gender-segregated bathrooms and locker rooms of their choice.

In May 2018, the 3rd Circuit issued a bench decision affirming the district court’s denial of Plaintiff’s request for a preliminary injunction, rejecting their argument that allowing transgender students to use the same facilities as cisgender students violates cisgender students’ right to privacy or otherwise causes them harm.

The suit marks the first time a suit filed by non-transgender plaintiffs challenging an existing transgender-inclusive school policy has reached a federal appeals court.
OCR Case Processing Manual
On March 5, 2018, the U.S. Department of Education Office for Civil Rights issued a revised Case Processing Manual, setting forth OCR’s procedures for conducting civil rights investigations, monitoring enforcement actions, and initiating compliance reviews.

The new Manual limits what qualifies as an OCR complaint. “Not all information that OCR receives is sufficient to constitute a complaint subject to further processing.”

The following are not subject to further processing:

- Anonymous correspondence
- Courtesy copies of correspondence or documentation filed with or otherwise submitted to another person or entity
- Inquiries that seek advice or information from OCR
- Allegations that are communicated to OCR orally
- Written information that relies exclusively on statistical data, media reports, journals/studies, and/or other published articles as the basis for the alleged discrimination. (But, at OCR’s discretion, this may be sufficient to justify the provision of technical assistance or the opening or a compliance review or directed investigation.)
The new Manual expands the grounds for dismissing complaints. OCR can now dismiss complaints for the following new or revised reasons:

- **Initial Determination:** OCR is unable to conclude, based on a review of the documents and/or information received from the complaint, that the complaint establishes a violation of one of the laws OCR enforces.

- **Burden on OCR Resources:** A complaint filed against multiple recipients will be dismissed when “viewed as a whole, [it] places an unreasonable burden on OCR’s resources.” This will allow OCR to decide not to investigate multiple complaints filed by a single “frequent flyer” complainant (for example, in the areas such as web accessibility and Title IX athletics).

- **Same or Similar Cases:** Complaints will be dismissed when they contain the same or “similar allegations based on the same operative facts” as cases in other forums, such as in federal or state court litigation, a recipient’s internal grievance procedures, or OCR’s complaint process. Previously, only cases with the exact same allegations could be closed.

- **Complainant Information:** The complainant fails to provide information requested by OCR within 14 calendar days (shortened from 20 days).
The new Manual provides more information to and more flexibility for school districts and institutions alleged to have violated civil rights law.

- A copy of the complaint will be provided to recipients upon request.
- The timeframe for responding to OCR’s data requests will be established at OCR’s discretion, depending on the nature and extent of data requested and/or other special circumstances, “including factors affecting feasibility of the timeframe brought to OCR’s attention by the recipient.” The previously suggested 15 calendar day response time has been dropped.

- The new procedures add: “OCR will make efforts to work with recipients to conduct interviews in a manner that minimizes disruptions to the recipient’s educational environment.”
The new Manual provides expanded opportunities to resolve complaints earlier and more easily.

- **“RRP”**: The **Rapid Resolution Process**, an expedited case processing for resolving cases early in the process, can now be used for all cases (not just disability cases).

- **“FCR”**: The option for the parties to mediate an agreement with OCR is still available, but is now called **“Facilitated Complaint Resolution”** (previously, it was called “Early Complaint Resolution (or “ECR”)).

- **“RA”**: The new Manual provides the regional offices and recipients with more time to negotiate **Resolution Agreements**. For cases subject to the 30-day negotiations timeframe (resolutions entered prior to any compliance findings), negotiations may continue after the 30th day while the investigation is ongoing. For cases subject to the 90-day timeframe (cases with violation findings), negotiations may be extended for another 30 days when negotiations are “on-going.”
The new Manual no longer requires that, prior to the closure of monitoring, OCR also make a determination that the recipient is in compliance with the statute(s) and regulation(s) that were at issue. This language also no longer needs to be included in agreements.

The new Manual does away with the agency’s former appeals process altogether. Although not required by statute or regulation, OCR previously offered complainants (but not recipients) the opportunity to appeal the agency’s substantive compliance determinations. Under the new Manual, neither party can appeal OCR’s determinations.

Regional OCR offices are now required to focus on the investigation and resolution of “allegations” instead of “allegations and issues” or “issues of systemic discrimination.”
Regulations
Assistance to States for Education of Children with Disabilities
(“Significant Disproportionality” Rule)
Ripped from the headlines

Department of Education delays equity in IDEA compliance date by two years

Are too many minority students identified as disabled? Or are some who need services overlooked?

By Valerie Strauss  May 4  Email the author
Assistance to States for Education of Children with Disabilities

- The Department postponed until July 1, 2020 the date for states to comply with the “Equity in IDEA” or “significant disproportionality” regulations.
  - The Obama-era rule addresses whether minority students are disproportionately placed in special education.
  - It created a new process for states to follow when they monitor how districts identify minority students for special education, discipline them, or place them in restrictive classroom settings.
- The Department postponed until July 1, 2022 the date for including children ages 3-5 in the analysis of significant disproportionality, with respect to the identification of children as children with disabilities and as children with a particular impairment.
The Department does not feel that the causes and solutions for the problem have received sufficient study and believes “that the racial disparities in the identification, placement or discipline of children with disabilities are not necessarily evidence of, or primarily caused by, discrimination, as some research indicates.”

The Department says that the delay will “give states the opportunity to examine this issue through their own policies and procedures.”
What does the delay mean for schools?

- The IDEA requires monitoring on how districts identify minority students for special education, discipline them, or place them in restrictive classroom settings. This has not changed.
- It is an opportunity to evaluate how your district does its monitoring.
- According to *Politico*, 15 states plan to move forward with the rule, even if it is delayed.
What does the delay mean for schools?

AASA statement:

**AASA Comments On Significant Disproportionality Regulation Delay**

AASA was pleased to offer comments on the U.S. Department of Education’s proposed delay of regulations on how to calculate significant disproportionality in IDEA. AASA had serious concerns with the 2016 disproportionality regulations issued in the waning days of the Obama Administration.

While we agree and disagree with various aspects of the 2016 regulations issued under the Obama Administration we do not quibble on whether the Department had the authority to determine a methodology for findings of significant disproportionality including setting an “n” size for districts and assessing whether a risk-ratio threshold is reasonable. The Department did not have the legal authority to issue these regulatory provisions. Furthermore, the 2016 significant disproportionality regulations vary considerably from prior regulation and the underlying statute. After careful review we support a delay and reconsideration of the 2016 significant disproportionality regulations by the Trump Administration.

You can read our complete comments here.
Rescindment of Obama Guidance on Race-Conscious Admission Policies
Ripped from the headlines

POLITICS

Obama-Era Guidelines Encouraging Affirmative Action Rescinded

July 4, 2018 · 5:03 AM ET
Heard on Morning Edition

The Trump Administration Just Rescinded Obama-Era Guidance on Race-Conscious Admissions Policies. So What?

By Eric Hoover | JULY 03, 2018
Rescindment of Obama Guidance on Race-Conscious Admission Policies

❑ The Department of Justice and Education recently announced that they have rescinded Obama-era guidance that advised schools on how they could legally consider race in admissions.

❑ In a DCL, the Administration says, “[they] have concluded that the documents advocate policy preferences and positions beyond the requirements of the Constitution...Moreover, the documents prematurely decide, or appear to decide, whether particular actions violate the Constitution or federal law. By suggesting to public schools, as well as recipients of federal funding, that they take action or refrain from taking action beyond plain legal requirements, the documents are inconsistent with governing principles for agency guidance documents."
What does the rescindment mean for schools?

- The guidance does not have the force of law that the Supreme Court cases on affirmative action have. Those cases still stand.
What does the rescindment mean for schools?

AASA’s take:

"AASA is deeply concerned with the Trump administration’s latest policy strategy related to affirmative action. We are opposed to the short-sighted proposal that would work to undermine concerted efforts underway in districts across the nation to ensure that the schools and classrooms reflect the diversity of the broader communities they serve. It is imperative that the nation's school system leaders have the flexibility they need in addressing the racial and economic diversity of their schools and students. Given that guidance is non-binding and does not have the power of the law, AASA errs on the side of equity, diversity and flexibility, and opposes the Trump administration’s latest proposal."
Wrap Up/Questions
Questions? Reach out to us.

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