Legal Update: Prayer, Vouchers, Snapchat, Harassment, Student Restraint, COVID and more . . .

American Association of School Administrators
July 14, 2022
Maree Sneed
True/False

- **True or False?** The Supreme Court ruled that coaches may pray in the locker room and on the field before and after games.
- **True or False?** The Supreme Court decided that states may pay tuition for students to attend private religious schools.
- **True or False?** A recent ruling by the Supreme Court says that schools cannot punish students for off-campus speech.
- **True or False?** The Biden Administration has overturned the Trump Administration’s regulations related to sexual harassment under Title IX.
- **True or False?** Justice Ketanji Brown Jackson graduated from a private high school in Miami.
Agenda

- Supreme Court Update
  - Court Composition
  - Judge Brown Jackson’s Nomination and Confirmation
  - Important Cases Affecting School Districts
- Title IX
- Racial Harassment
- Students with Disabilities
- Charter Funding Regulations
- Q&A
SCOTUS – A High-level Look

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

- 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.
Confirmation of Brown Jackson

Senate confirms Jackson as first Black woman on Supreme Court

Judge Ketanji Brown Jackson won support from all Democrats and a handful of Republicans. She will be sworn in when Justice Stephen G. Breyer retires this summer.

By Mike DeBonis and Seung Min Kim

Washington Post, April 7, 2022|Updated April 7, 2022 at 7:01 p.m. EDT

The Senate voted Thursday to confirm Judge Ketanji Brown Jackson to the Supreme Court, felling one of the most significant remaining racial barriers in American government and sending the first Democratic nominee to the high court in 12 years.

Jackson, a daughter of schoolteachers who has risen steadily through America’s elite legal ranks, will become the first Black woman to sit on the court and only the eighth who is not a White man. She will replace Associate Justice Stephen G. Breyer after the Supreme Court’s term ends in late June or early July.
Ketanji Brown Jackson sworn in as first Black woman on Supreme Court

- “Jackson’s accession means that four women will simultaneously serve on the Supreme Court for the first time in its history.

- “Ketanji Brown Jackson was sworn in Thursday as the Supreme Court’s 116th justice and its first Black woman on the bench, a historic change for an institution that for the first time is no longer composed of a majority of White men.

- ‘I am truly grateful to be part of the promise of our great Nation,’ Jackson said in a statement distributed by the court’s public information office.

- Jackson took the dual oaths of office at a simple ceremony in the court’s West Conference Room that was live-streamed. Chief Justice John G. Roberts Jr. administered the constitutional oath, and Justice Stephen G. Breyer, the man she replaced and for whom she served as a law clerk, led her through the judicial oath. Her husband, Patrick Jackson, held two Bibles on which she rested her hand.”
A Transformative Term at the Most Conservative Supreme Court in Nearly a Century

By Adam Liptak, New York Times, July 1, 2022

• “WASHINGTON — The Supreme Court moved relentlessly to the right in its first full term with a six-justice conservative majority, issuing far-reaching decisions that will transform American life. It eliminated the constitutional right to abortion, recognized a Second Amendment right to carry guns outside the home, made it harder to address climate change and expanded the role of religion in public life.

• But those blockbusters, significant though they were, only began to tell the story of the conservative juggernaut the court has become. By one standard measurement used by political scientists, the term that ended on Thursday was the most conservative since 1931.

• “The data provide stunning confirmation of the Republican-conservative takeover of the Supreme Court,” said Lee Epstein, a law professor and political scientist at the University of Southern California who oversees the Supreme Court Database.”
Recent Key SCOTUS Decisions Affecting School Districts
Supreme Court to hear case of high school football coach who lost job after praying with players

By Robert Barnes, January 14, 2022, Washington Post

• “The Supreme Court said Friday it will take up the case of a high school football coach who lost his job after a contentious battle with the school district over his postgame midfield prayers.

• The court’s new conservative majority has been protective of individual religious rights, and it was not a surprise it took the case of Joseph Kennedy’s legal fight with the Bremerton, Wash., school district, which began in 2015.

• It was one of a handful of cases the court accepted Friday as it fills out its docket for the current term. Barring an emergency, the court hears oral arguments through April, and then attempts to finish opinions in the argued cases by the end of June.”
Supreme Court Leans Toward Coach in Case on School Prayer

• “Members of the court’s conservative majority indicated that the coach, Joseph A. Kennedy, had a constitutional right to kneel and pray at the 50-yard line after games.”
  — By Adam Liptak, New York Times, April 25, 2022

• “WASHINGTON — The Supreme Court’s conservative majority seemed to be searching on Monday for a narrow way to rule in favor of a former high school football coach who lost his job for praying at the 50-yard line after his team’s games.

• According to Paul D. Clement, one of Mr. Kennedy’s lawyers, all that was at issue in the case now was whether his client could offer a brief, silent and solitary prayer of thanks after his team’s games. Earlier episodes were not relevant, Mr. Clement said.

• “Coach Kennedy was fired for that midfield prayer, not for any earlier practices,” Mr. Clement said, adding that the school district’s actions violated Mr. Kennedy’s First Amendment rights.

• Richard B. Katskee, a lawyer for the Bremerton School District, said it was entitled to require that its employees refrain from public prayer if students were likely to feel coerced into participating.

• “He insisted on audible prayers at the 50-yard line with students,” Mr. Katskee said of Mr. Kennedy. “He announced in the press that those prayers are how he helps these kids be better people.””
The Supreme Court in a 6-3 decision ruled in favor of the football coach.

- **Background**: The Bremerton School District prohibited its football coach from kneeling in prayer at the 50-yard line after games.

- **Issue**: Did the school district violate the coach’s First Amendment rights to free exercise of religion?

- **Holding**: The school district violated the coach’s free exercise and free speech clauses of the First Amendment. The Free Exercise and Free Speech clauses protect an individual engaging in a personal religious observance.
According to Justice Gorsuch in the majority opinion, the coach was not engaged in speech “ordinarily within the scope” of the coach’s duties. The coach was not involved in instructing players, discussing strategy, encouraging better on-field performance or engaging in any other speech for which he was paid as a coach.

The timing and circumstances of the coach’s prayers, which took place after the game when coaches were free to attend briefly to personal matters and students were engaged in other activities, confirm that the coach did not offer his prayers while acting with the scope of his duties.
Kennedy v. Bremerton School District (continued)

- In the dissenting opinion, Justice Sotomayor stated that "[t]he record reveals that Kennedy had a longstanding practice of conducting demonstrative prayers on the 50-yard line of the football field. Kennedy consistently invited others to join his prayers and for years led student athletes in prayer at the same time and location. The Court ignores this history. The court also ignores the severe disruption to school events caused by Kennedy’s conduct, viewing it as irrelevant because . . . the District stated it was suspending Kennedy to avoid it being viewed as endorsing religion.”
Supreme Court backs coach in praying on field after games

By Jessica Gresko | AP, June 27, 2022 at 9:22 p.m. EDT

• “The case forced the justices to wrestle with how to balance the religious and free speech rights of teachers and coaches with the rights of students not to feel pressured into participating in religious practices. The liberal justices in the minority said there was evidence that Bremerton (Washington) High School Coach Joseph Kennedy’s prayers at the 50-yard-line had a coercive effect on students and allowed him to incorporate his “personal religious beliefs into a school event.”

• Dissenting Justice Sonia Sotomayor wrote that the decision “sets us further down a perilous path in forcing states to entangle themselves with religion.”

• But the justices in the majority emphasized that the coach’s prayers came after the games were over and at a time when he wasn’t responsible for students and was free to do other things.”
George Will, Washington Post, June 29, 2022

“One can, however, understand the Bremerton school district’s skittishness about the coach’s kneeling and praying quietly, especially because, over time, he was joined by players and spectators, unbidden, after games. (He had stopped leading group prayers in the locker room.) Attention from media and politicians intensified worries that prayers by the coach — a government employee at a public school event — would be deemed government speech endorsing religion. And that players and other students might feel coerced to conform to the coach’s practices.

Nevertheless, Justice Neil M. Gorsuch, joined by justices Roberts, Thomas, Alito, Kavanaugh and Barrett, wrote that the risk-averse school district, which terminated the coach’s employment, tried to avoid one constitutional violation, but committed another. Seeking to avoid seeming government endorsement of religious speech, it violated the coach’s rights of free speech and free exercise of religion. Gorsuch argued that no reasonable observer would have concluded that the specific actions for which the school district disciplined the coach — brief, quiet and solitary prayers after three games — were the government speaking.

Gorsuch noted that the free speech and free exercise clauses “work in tandem,” protecting both expressive and noncommunicative religious activities: ‘That the First Amendment doubly protects religious speech is no accident. It is a natural outgrowth of the framers’ distrust of government attempts to regulate religion and suppress dissent.’”
Parental Rights Were Ignored in the Praying Coach Ruling

Analysis by Stephen L. Carter | Bloomberg

• June 27, 2022 at 5:02 p.m. EDT

• “On the other hand, the courts should not allow even majorities to force the kids into situations that interfere with parents’ efforts to shape their children’s religious (or nonreligious) world views. And this would of course include situations, such as organized classroom prayer, where students as a formal matter can opt out but in practice often feel peer pressure to join in.

• All of which brings us back to the football coach kneeling in prayer after games. If the majority is right that no coercion was involved, that’s the end of the matter. But if Justice Sotomayor is correct that at least some students felt pressured to join in, a problem does indeed arise. The concern, however, isn’t the Establishment Clause. It’s that coercion in matters of religion violates the right of parents to direct their children’s education. Next time around, that’s where the court’s analysis should begin.”
Supreme Court likely to drop school voucher bombshell

By Valerie Strauss, Washington Post, May 27, 2022

• “The public focus on upcoming Supreme Court rulings has been on Roe v. Wade, the 1973 ruling that legalized abortion nationwide, and the Dobbs v. Jackson draft opinion overturning that precedent. But the court will also soon be handing down a decision in another case that could cause an earthquake for public education.

• The case is Carson v. Makin, which was brought to expand voucher policies that provide public money for private and religious education. The case involves a program in Maine that allows the state to pay for tuition at private schools in areas where there is no public school — so long as that private institution is “nonsectarian in accordance with the First Amendment.” Two families, along with a libertarian institute, brought a suit asking that courts require the state to include sectarian religious schools in the program.

• Similar requests have been rejected by lower courts. But, as my Post colleague Robert Barnes reported, during hearings last December in Carson v. Makin, the conservative justices on the Supreme Court — who represent the majority, “seemed ready … to extend a line of recent rulings favoring religious interests” and “were critical” of the Maine program that disallowed public funds from going to religious instruction.

• In Carson v. Makin, the conservative majority of the Supreme Court is likely to require Maine officials to use public funding to subsidize religious teaching and proselytizing at schools that legally discriminate against people who don’t support their religious beliefs. A ruling in favor of the families would “amount to a license to outsource discrimination,” according to Kevin Welner, director of the National Education Policy Center at the University of Colorado at Boulder’s School of Education. He is also an attorney and a professor of education.”
Many towns in Maine do not have public school districts. The state provides a tuition assistance program for residents of those localities to send their children to private schools, but sectarian schools are excluded. The Institute for Justice represented two families challenging the exclusion of sectarian schools from the program.

The First Circuit said that the distinctive character and limited scope of Maine’s tuition assistance program separated it from the aid programs recently considered by SCOTUS in *Trinity Lutheran* and *Espinoza*.
Carson v. Makin (continued)

• SCOTUS granted cert on July 2, 2021.

• **Issue:** Whether a state violates the religion clauses or equal protection clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or “sectarian,” instruction.
Supreme Court Rejects Maine’s Ban on Aid to Religious Schools

By Adam Liptak, New York Times, June 21, 2022

• “WASHINGTON — The Supreme Court ruled on Tuesday that Maine may not exclude religious schools from a state tuition program, the latest decision by a conservative majority that has increasingly favored the role of religion in public life.

• The vote was 6 to 3, with the court’s three liberal justices in dissent.

• Chief Justice John G. Roberts Jr., writing for the majority, said the ruling did not require states to support religious education. But states that choose to subsidize private schools, he added, may not discriminate against religious ones.

• In separate dissents, Justice Sonia Sotomayor and Justice Stephen G. Breyer expressed dismay at the direction of the court in taking up matters of religion in the public sphere. Justice Sotomayor said the decision was another step in dismantling ‘the wall of separation between church and state that the framers fought to build.’"
High court opens the door to more public funding of religious schools

The Supreme Court ruled that Maine could not exclude Christian schools from its voucher program

By by Moriah Balingit, Washington Post, June 21, 2022

• “Despite its limited impact, the decision marks a victory for proponents of school privatization and school choice. In the last year, they have successfully lobbied state lawmakers to create or expand programs that send taxpayer dollars to private schools. These come in a variety of forms — and put taxpayer dollars directly in the hands of parents, who can choose what kind of education they want for their children.

• “This ruling affirms that parents should be able to choose a school that is compatible with their values or that honor and respect their values,” Leslie Hiner, vice president of legal affairs for EdChoice, said in a statement. “By shutting out parents with certain values, that’s discrimination run rampant.”

• “Faith-based are really critical to their success because they have a very proven track record of educating disadvantaged kids.”

• Legal scholars and advocates say the case itself will have little immediate impact, but they worried the case signals that the court will continue to open the door for religious institutions, including schools, to access public funds.”
How Supreme Court ruling lays groundwork for religious charter schools

By Valerie Strauss, Washington Post, June 21, 2022

• “As my colleague Robert Barnes reported, the Supreme Court on Tuesday struck down that program with a 6-to-3 vote, saying it must allow tuition given by the state to go to religious schools as well as nonsectarian private schools. The ruling was the latest by the court in recent years that have been eroding the constitutional separation of church and state, including a 2020 5-to-4 decision that a Montana tax incentive program that indirectly helps private religious schools is constitutional.

• The reaction was what you would expect: Those who support the privatization of public education were thrilled, and those who don’t were appalled.

• The nonprofit Center for Education Reform said it was “a victory for students across the nation” and a validation of “parents’ right to direct the education of their children.” Richard Kahlenberg, a senior fellow and leading K-12 education expert at the nonprofit Century Foundation, echoed others in saying the court “further divided Americans by requiring Maine’s state tuition program to fund private religious schools that openly discriminate against LGBT people and non-Christians” — and said it ‘undercuts the venerable goal of promoting e pluribus unum.”
SCOTUS granted cert on April 26, 2021 and decided case on March 24, 2022

**Issue**: Whether the First Amendment restricts the authority of an elected body to issue a censure resolution in response to a member’s speech.

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**LAW & COURTS**

Supreme Court to Weigh When School Board Censure of a Member Violates the First Amendment

By Mark Walsh — April 26, 2021  5 min read
A community college board censured a board member after he made divisive remarks regarding a proposed campus in Qatar. The board member sued claiming that the censure move violated the First Amendment. The District Court dismissed his case. The Fifth Circuit reversed, holding:

- A reprimand against an elected official for speech addressing a matter of public concern is an actionable First Amendment claim.

The community college board appealed to the Supreme Court, noting that the Fifth Circuit’s decision splits from established precedent in other circuits. Case law in other circuits states that censure motions by the government are protected speech under the First Amendment and cannot themselves create a First Amendment harm.
• Supreme Court decided case on March 24, 2022.

• In a unanimous decision written by Justice Gorsuch, Supreme Court reversed the 9th Circuit decision and held that the defendant did not have an actionable First Amendment claim.

• In his opinion, Gorsuch stated that opinion was “a narrow one” about “purely verbal censures.”

• Gorsuch also said that court does not “mean to suggest that verbal reprimands or censures can never give rise to a First Amendment retaliation claim. It may be, for example, that government officials who reprimand or censure students, employees or licenses may in some circumstance materially impair First Amendment freedoms,” but “those cases are not this one.”
The Future of Student Free Speech Comes Down to a Foul-Mouthed Cheerleader

A cheerleader’s Snapchat rant leads to ‘momentous’ Supreme Court case on student speech

A turning point for student speech?
Mahanoy Area School District v. B.L.

Background

• A school district disciplined a student for posting a vulgar message on Snapchat while located off-campus. The message did not reference the school or any specific individuals.

• The student alleged that the school violated her First Amendment rights. The District Court agreed, and the Third Circuit affirmed.
Mahanoy Area School District v. B.L.

Background

• **Issue:** Whether the First Amendment prohibits public school officials from regulating off-campus student speech

• **Holding:** Schools may regulate some off-campus speech if that speech “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” However, B.L.’s Snapchat did not meet this standard, so her suspension was unconstitutional.

  – Geographically speaking, off-campus speech will normally fall within the zone of parental, rather than school-related, responsibility. However, SCOTUS refers back to the key tenets of *Tinker*, allowing schools to regulate speech that causes substantial disruption in school.

  – Off-campus speech regulations coupled with on-campus speech regulations would mean a student cannot engage in the regulated type of speech at all.

  – The school itself has an interest in protecting a student’s unpopular off-campus expression because the free marketplace of ideas is a cornerstone of our representative democracy.
Mahanoy Area School District v. B.L. (continued)

Breyer Examples

“Unlike the Third Circuit, we do not believe the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus. The school’s regulatory interests remain significant in some off-campus circumstances.” Examples include:

– Severe bullying or harassment targeting individuals
– Threats aimed at teachers or other students
– The failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities
– Breaches of school security devices
The Supreme Court did not rule that schools cannot regulate off-campus speech. However, for a school to regulate off-campus speech, the speech must relate to substantial disruption or invade the rights of others.

The majority opinion seems to indicate that the bar for showing substantial disruption or invasion of the rights of others is higher for off-campus speech than for on-campus speech.

When punishing off-campus speech, school administrators should ensure that they have sufficient evidence to show how the speech was disruptive or invaded the rights of others. The Supreme Court did not set a clear line for how disruptive speech must be.

Takeaways
“WASHINGTON — The Supreme Court agreed on Monday to decide whether race-conscious admissions programs at Harvard and the University of North Carolina are lawful, raising serious doubts about the future of affirmative action in higher education.

The court has repeatedly upheld similar programs, most recently in 2016. But the court’s membership has tilted right in recent years, and its new conservative supermajority is almost certain to view the challenged programs with skepticism, imperiling more than 40 years of precedent that said race could be used as one factor among many in evaluating applicants.”
Students for Fair Admissions v. President and Fellows of Harvard College

Case Background

• In November 2014, the Students for Fair Admissions (“SFFA”) filed a lawsuit in federal court against Harvard alleging that the university impermissibly uses race in its admissions process. Specifically, the lawsuit claimed that Harvard discriminates against Asian-American applicants.

• On October 1, 2019, Judge Allison Burroughs of the United States District Court of Massachusetts ruled in favor of Harvard holding that Harvard’s use of race-conscious admissions does not violate Title VI of the Civil Rights Act.

• SFFA appealed the district court decision. On November 12, 2020, the First Circuit affirmed the decision of the lower court. On February 25, 2021, Plaintiffs filed a cert petition for review by the Supreme Court. The Supreme Court granted cert on January 24, 2022.
Challenges to School District Admission Criteria
Example of Challenges to Admission Criteria

- Fairfax County Public Schools – Thomas Jefferson High School
- Loudon County Public Schools – Academies of Loudon
- Montgomery County Public Schools – Middle School Magnet Schools
- New York City Public Schools – Selective Schools
- Boston Public School – Exam Schools
Title IX
Title IX

- **Title IX of the Education Amendments of 1972** (20 U.S.C. § 1681) –

  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 prohibits sex discrimination in education and in employment.
### Required response

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<tr>
<th>What type of sex-based conduct does this apply to?</th>
<th>Sexual harassment</th>
<th>Other sex discrimination</th>
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<tbody>
<tr>
<td>1. Quid pro quo</td>
<td></td>
<td>Hostile environment – the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school</td>
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<tr>
<td>2. “Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity”</td>
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<td>3. Sexual assault, dating violence, domestic violence, stalking</td>
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<tr>
<th>When is a school required to respond?</th>
<th>When it has actual knowledge of the conduct</th>
<th>When it knows or reasonably should know about the conduct</th>
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<tr>
<th>How must a school respond?</th>
<th>Promptly and not with deliberate indifference (i.e., not clearly unreasonable in light of the known circumstances)</th>
<th>Promptly and equitably</th>
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| Other notes | The regulations include specific requirements and grievance procedures that must be followed | Same as required response to discrimination based on other protected statuses (e.g., race, disability) |
Examples of conduct that may violate Title IX

- A principal gives a “Best in STEM” award to a male student, even though two girls in the school have STEM grades much better than his.
- Football players “haze” a teammate because they think he is gay.
- An anonymous individual spray paints graffiti with sexually explicit images and words.
- A teacher refuses to provide an accommodation to a transgender girl who is not comfortable using the boys’ restroom.
- A student sexually assaults a classmate.
- A pregnant middle schooler is shunned by students and chastised by school leadership.
Biden Administration and Title IX activity

- **Jan. 20**: Pres. Biden issues Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- **Mar. 8**: Pres. Biden issues Executive Order on Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity
- **Apr. 6**: OCR announces comprehensive review of Title IX regulations
- **May 17**: OCR announces virtual public hearing to gather information for improving Title IX enforcement; virtual public hearing occurs June 7-11
- **June 16**: OCR issues a Notice of Interpretation confirming that prohibition on sex discrimination includes discrimination based on sexual orientation or gender identity
- **June 22**: Biden Administration releases Unified Agenda of Regulatory and Deregulatory Actions, which indicates that a new Title IX regulation may be released in May 2022
- **July 20**: OCR issues a Q&A and related Appendix regarding its interpretation of schools’ obligations under the sexual harassment regulations
- **October 26**: OCR issues a Fact Sheet on how schools can support intersex students
On October 26, 2021, the Department issued a fact sheet on how schools can support intersex students. “Intersex” generally describes people with variations in physical sex characteristics. These variations may involve anatomy, hormones, chromosomes, and other traits that differ from expectations generally associated with male and female bodies. Federal civil rights laws protect all students, including intersex students, from sex discrimination. This protection includes, for example, protection against discrimination because students do not fit stereotypical views about boys and girls or men and women.
Unlike prior Department of Education guidance related to Title IX and sexual harassment, the Trump administration conducted a formal, negotiated rulemaking process to modify Title IX regulations.

Any attempts to amend the regulations must go through the same process, so no quick change will occur.

On April 6, OCR announced that it will initiate a comprehensive review of the Title IX regulations. Public hearings began on June 7. On June 22, the Biden Administration released its Unified Agenda of Regulatory and Deregulatory Actions, in which the Administration that a new proposed Title IX regulation will likely be released in May 2022.

On July 20, OCR issued a Q&A and related Appendix regarding its interpretation of schools’ obligations under the sexual harassment regulations.
Sweeping Title IX changes would shield trans students, abuse survivors

The Biden administration’s proposal would recognize that transgender students are covered by the law and undo rules devised during the Trump administration.

By Moriah Balingit and Nick Anderson, Washington Post, June 23, 2022

• “On the 50th anniversary of Title IX, the Biden administration proposed sweeping changes to the landmark law that would bar schools, colleges and universities from discriminating against transgender students, as the battle over transgender rights moves to the front lines of the culture war.

• The proposal would also amend the rules that govern how educational institutions investigate and resolve claims of sexual assault and sexual harassment. Over concerns that people were being wrongfully punished, President Donald Trump’s education secretary, Betsy DeVos, revised the rules to make them more accommodating to the accused. Critics assailed the changes, saying they would discourage sexual assault survivors from coming forward to report assaults or harassment.”
Proposed Title IX Regulations

• The U.S. Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment

• Department Commemorates 50 Years of Protecting and Advancing the Rights of All Students

• JUNE 23, 2022

• “The proposed regulations will advance Title IX's goal of ensuring that no person experiences sex discrimination, sex-based harassment, or sexual violence in education. As the Supreme Court wrote in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), it is "impossible to discriminate against a person" on the basis of sexual orientation or gender identity without "discriminating against that individual based on sex." The regulations will require that all students receive appropriate supports in accessing all aspects of education. They will strengthen protections for LGBTQI+ students who face discrimination based on sexual orientation or gender identity. And they will require that school procedures for complaints of sex discrimination, including sexual violence and other sex-based harassment, are fair to all involved. The proposed regulations also reaffirm the Department's core commitment to fundamental fairness for all parties, respect for freedom of speech and academic freedom, respect for complainants' autonomy, and clear legal obligations that enable robust enforcement of Title IX.”
• “The proposed regulations would:

• Clearly protect students and employees from all forms of sex discrimination.

• Provide full protection from sex-based harassment.

• Protect the right of parents and guardians to support their elementary and secondary school children.

• Require schools to take prompt and effective action to end any sex discrimination in their education programs or activities – and to prevent its recurrence and remedy its effects.

• Protect students and employees who are pregnant or have pregnancy-related conditions.”
Proposed Title IX Regulations (continued)

• “Require schools to respond promptly to all complaints of sex discrimination with a fair and reliable process that includes trained, unbiased decisionmakers to evaluate the evidence.

• Require schools to provide supportive measures to students and employees affected by conduct that may constitute sex discrimination, including students who have brought complaints or been accused of sex-based harassment.

• Protect LGBTQI+ students from discrimination based on sexual orientation, gender identity, and sex characteristics.

• Clarify and confirm protection from retaliation for students, employees, and others who exercise their Title IX rights.

• Improve the adaptability of the regulations' grievance procedure requirements so that all recipients can implement Title IX's promise of nondiscrimination fully and fairly in their educational environments.

• Ensure that schools share their nondiscrimination policies with all students, employees, and other participants in their education programs or activities.

• The Department will engage in a separate rulemaking to address Title IX's application to athletics.”

- **Issue**: Whether an employer can fire an employee for their sexual orientation or being transgender.
- **Holding**: Title VII of the Civil Rights Act of 1964 protects employees against discrimination because of their sexual orientation or gender identity.
  - Discrimination on the basis of sexual orientation or gender identity is necessarily also discrimination “because of sex” as prohibited by Title VII.
  - Employers discriminating against gay or transgender employees accept a certain conduct (e.g., attraction to women) in employees of one sex but not in employees of the other sex.

**A Landmark Supreme Court Case For LGBTQ Educators and Students**

On June 15, the Supreme Court’s decision in ‘Bostock v. Clayton County, GA’ made it illegal for employers to discriminate against LGBTQ people in the workplace.
On June 16, the Department said that discrimination against transgender students was prohibited under the law, a reversal of its Trump-era position.

The Department’s decision was rooted in last year’s SCOTUS ruling in *Bostock v. Clayton County*.

At least 30 state legislatures have introduced legislation that would prohibit transgender girls from participating on girls sports teams.
U.S. Department of Education’s Office for Civil Rights Announces Resolution of Sexual Harassment Investigation of Chino Valley Unified School District in California

- APRIL 5, 2022, Contact: Press Office, (202) 401-1576, press@ed.gov

- “The U.S. Department of Education’s Office for Civil Rights (OCR) today announced the resolution of a sexual harassment investigation of the Chino Valley Unified School District in San Bernardino County, California.

- OCR determined that the district violated Title IX of the Education Amendments of 1972 and its implementing regulations by failing to provide an effective response to notice of sexual harassment among members of a school athletics team in fall 2017.

- The office found that some team members subjected their fellow teammates to sexual harassment on the team bus, in the locker and weight rooms, and in the Athletics Physical Education classroom that was sufficiently serious so as to limit their ability to access the athletics program. OCR further found that this harassment created a hostile educational environment for team members who reported they were disgusted and shocked by the harassment, avoided the locker room and the team’s social media to avoid such harassment, sought counseling, and feared becoming the targets of harassment and considered leaving the school and team.

- The harassing conduct included videotaped assaults of teammates, students forcibly physically overpowering other students and sharing photos of their genitals among the team and on social media and placing their genitals on and near other students’ faces and bodies. Evidence reflected that the student harassers directed other students not to say anything about what happened to avoid getting in trouble.

- The response from school staff, including coaches, to these incidents was not reasonably calculated to end the harassing conduct or prevent its recurrence. Likewise, the district’s response following investigations reflected an inability to address adequately the conduct and a failure to consider interim supportive measures to protect student athletes from sexual harassment.”
• “The district’s commitments to resolve the investigation include:
• Contacting all former athletes from the school’s fall 2017 team and offering counseling services or reimbursement for such services received to address the effects of the district’s failure to address known sexual harassment on the team.
• Conducting a climate survey for the school’s athletics team.
• Training district and school administrators and interscholastic coaching staff about their responsibilities for responding effectively to sexual harassment.
• Conducting ongoing Title IX education for student athletes in the district’s athletics program to ensure that they know how to recognize and report sexual harassment. And,
• Reporting to OCR about the district’s training and responses to complaints of sexual harassment through the end of the 2022-2023 school year.”
Tamalpais OCR Resolution Agreement: Sexual Harassment

- U.S. Department of Education’s Office for Civil Rights Announces Resolution of Sex-Based Harassment Investigation of Tamalpais Union High School District
- JUNE 24, 2022, Contact: Press Office, (202) 401-1576, press@ed.gov

- “The U.S. Department of Education’s Office for Civil Rights (OCR) today announced the resolution of a sex-based harassment investigation of the Tamalpais Union High School District in California.

- OCR determined that the district violated Title IX of the Education Amendments of 1972 and its implementing regulations by failing to respond promptly and effectively to repeated notice of ongoing sex-based harassment of a transgender student by another student, predicated on sex stereotyping.

- OCR found that the district failed to investigate known allegations that the other student had repeatedly harassed the student about her appearance, her voice, her body, her name, and her pronouns since the start of the 2017-2018 school year. The ongoing harassment the student experienced over the course of months left her feeling unsafe on campus. OCR also found that the district failed to respond promptly or effectively to notice in spring 2018 that this harassment was continuing, and that the district’s investigation of a 2018 incident involving alleged sex-based harassment of the student was neither adequate nor equitable. As a result of these failures, OCR determined that the district permitted the student to be subjected to a hostile environment based on sex that was sufficiently serious to deny or limit the student’s ability to participate in or benefit from the school’s program.”
Today’s resolution with the Tamalpais Union High School District addresses harassment visited on a transgender student based on unlawful sex stereotyping over the course of a school year,” said Catherine E. Lhamon, Assistant Secretary for Civil Rights. "This resolution will not only address discrimination against this one student but also ensure other students will not suffer the recurring harassment she experienced at school.”

The district’s commitments in the voluntary resolution agreement include:

- Offering to reimburse the student or her parent for past counseling and/or therapy services that the student received after the sex-based harassment began;
- Reviewing and revising, as necessary, its policies and procedures to clarify that harassment based on sex includes harassment based on sex stereotyping;
- Training its employees and contractors who respond to sex-based harassment about the Title IX obligation to respond promptly and equitably;
- Monitoring its schools’ responses to sex-based harassment complaints for compliance with the agreement and Title IX; and
- Providing documentation to OCR demonstrating that the district’s responses to complaints of sex-based harassment during academic years 2020-2021 and 2021-2022 complied with the agreement and Title IX.”
Racial Discrimination
As students return to classrooms, so does bullying. These activists want to stop it.

More than 70 percent of Asian American and Pacific Islander students experienced racism in the past year, and most of these incidents occurred online, according to a new report.

US teacher suspended for reportedly using N-word in classroom discussion

Video shows Georgia art teacher sitting on a desk and asking students if it was OK for her to use the word if 'I date a Black guy'

Students in ‘slave trade’ Snapchat group tried auctioning Black classmates

Screenshots of the chat are making the rounds.
Ripped from the Headlines – Bullying and Harassment

The DOJ announced a settlement with Davis School District in Utah to address race discrimination in its schools, including racial harassment against Black and Asian-American students.

The DOJ investigation revealed that the district had failed to respond to reports of race-based harassment including documented uses of racial slurs, derogatory racial comments, and assaults among students in the district.

Under the agreement, the district will retain a consultant to review and revise anti-discrimination policies. The district must also create a new department to handle race discrimination complaints, train staff, create a new reporting system, and develop a districtwide procedures to address race.
DOJ investigation reveals ‘serious and widespread racial harassment’ in this Utah school district

By Marjorie Cortez, Desert News, October 21, 2021

• “Black students in Davis School District told Department of Justice investigators that they were routinely called the N-word or other racial epithets by other non-Black students, and they were told that their skin was dirty or looked like feces.

• “Many Black students said the harassment was so pervasive and happened so often in front of adults that they concluded school employees condoned the behavior and believed reporting it further would be futile,” according to a Department of Justice press release that revealed findings of its investigation and details of a settlement with the school district.

• The press release, issued Thursday, also states that peers taunted Black students by making monkey noises at them, touching and pulling their hair without permission, repeatedly referencing slavery and lynching, and telling Black students “go pick cotton” and “you are my slave.”

• “Harassment related to slavery increased when schools taught the subject, which some Black students felt was not taught in a respectful or considerate manner,” the press release states.

• A settlement with the school district is intended to address race discrimination in Davis District schools, including “serious and widespread racial harassment of Black and Asian-American students.” The department opened its investigation in July 2019 under Title IV of the Civil Rights Act of 1964, the press release states.”
Racial Harassment Lawsuit in Utah District

• Davis School District Faces New Racial Harassment Lawsuit
• TownLift, March 20, 2022

• “FARMINGTON, Utah — A new lawsuit will see the Davis School District and three employees as defendants in a case involving racial harassment and differences in discipline for white and Black students.

• The student, identified by the initials S.S., is described as a Black 9th grader in the district who possesses “excellent” grades and is a swim team member.

• Allegedly, the student has faced racial harassment from classmates and discrimination regarding disciplinary action. In response, S.S. has experienced declining grades, severe anxiety, and severe stomach aches before going to school following several incidents, such as students calling S.S. a “cotton picker” and asking for a pass to use the N-word toward him, among other incidents.”
Addressing racist harassment in Minnesota schools

By Angela Davis and Samantha Matsumoto, NPRnews, March 08, 2022

“An African American student at Bloomfield Hills High School has filed a $150 million class-action federal lawsuit, alleging racial discrimination against her and other minority classmates.

The suit filed Thursday in U.S. District Court comes after school and officials at the majority-White school district faced criticism recently for their response to racist graffiti and social media messages, which prompted a student walkout and a community forum.

Lawyers for the unidentified 15-year-old who brought the suit against Bloomfield Hills Schools, Superintendent Patrick Watson and her high school principal, Charlie Hollerith, say it indicates an ongoing problem.”
The NAACP Legal Defense Fund on Tuesday filed a federal civil rights complaint against the Carroll Independent School District for failing to protect students from discrimination based on their race, sex or gender identity.

The complaint was filed with the U.S. Department of Education on behalf of two groups formed by Black Carroll ISD parents and students in the affluent North Texas suburb: Cultural & Racial Equity for Every Dragon and Southlake Anti-Racism Coalition.

It is the fourth such complaint against the district.

The Department of Education already had opened three investigations into allegations of racial and gender discrimination at Carroll ISD in Southlake in November 2021. The investigations came about a month after a Carroll ISD administrator asked teachers to provide an “opposing” view of the Holocaust in order to comply with a new Texas state law that was passed during last year’s legislative session with little guidance, prompting confusion among Texas educators.”
The U.S. Department of Education investigates claims of racial and gender discrimination at North Texas school district

THE TEXAS TRIBUNE, JAMES POLLARD NOV. 17, 2021 UPDATED: NOV. 18, 2021

• “The inquiry comes after several high-profile controversies at Carroll ISD, including an administrator's call for teachers to provide an "opposing" view of the Holocaust.

• The U.S. Department of Education has opened three investigations into allegations of racial and gender discrimination at Carroll Independent School District in Southlake, a school district spokesperson confirmed Wednesday.

• An Education Department spokesperson confirmed that the investigations are related to discrimination based on "race, color, national origin, or sex" but did not say what triggered the inquiries.

• The investigations, first reported by NBC News, come after several high-profile controversies at Carroll ISD that have drawn national attention. In October, a Carroll ISD administrator asked teachers to provide an “opposing” view of the Holocaust in order to comply with House Bill 3979, a state law that was passed during this year’s legislative session with little to no guidance, prompting confusion among Texas educators.”
Racist harassment complaint filed against southern Vermont school district

By John Hawks, mynbc5.com, December 22, 2021

WHITINGHAM, Vt. — A complaint filed with Vermont's Human Rights Commission alleges a school district in the state allowed racist bullying and harassment against a student to continue unchecked.

• Members of the American Civil Liberties Union filed a complaint with the commission on behalf of the Twin Valley Middle and High schools student. It alleges the student, who wishes to remain anonymous, experienced "derogatory racial slurs, references to white supremacy and threats of physical violence."

• According to the complaint, the 10th grade student ultimately chose to transfer after harassment escalated. It also notes they were the only Black student in the school when harassment was occurring.

• "Our client was subjected to months of racist and viciously racist abuse, harassment and bullying," said Lia Ernst, legal director ACLU of Vermont. "And school officials did essentially nothing to respond appropriately and to protect our client."
Families pull Black children from Bend schools amid racial slurs, harassment

By Bryce Dole | Bend Bulletin, March 14, 2022

“Every time Eli Prather heard the racial slur yelled in Bend High School’s crowded hallways last fall, he knew it was directed at him.

The 14-year-old freshman, one of the school’s few Black students, never saw who said it, but other students didn’t seem to care as they passed him. “Nobody’s really paying attention, because it doesn’t affect them,” said Eli, who identifies as queer.

Eli estimates the slur — the N-word — was aimed at him at least five times, but the harassment didn’t end there. Once, during study hall, a student approached him and compared him to a slave.”
Monroe school district under fire for 'pervasive' culture of racism, harassment
by Cole Miller, KOMO News Reporter, December 14th 2021

• “MONROE, Wash. — On the same day nearly 200 students walked out of class, parents and educators rallied outside the Monroe School District Monday demanding action be taken to address what they describe as a “pervasive” culture of racism and harassment in classrooms with students bullying each other more often.

• At Monroe High School, a huge group of students spent part of the morning marching outside the building, calling on safer schools. Earlier this month, the school’s principal was put on temporary leave after allegedly addressing the use of racial slurs by using – and listing off- some of those slurs during a Zoom call. In an email, KOMO News was told the intent was for it to be “instructive” but several students later came forward and complained.

• At the district headquarters, dozens of parents and teachers gathered to express their concern.

• “It’s not just racism,” said Heather Young. ‘Unfortunately, it’s a broad culture of harassment and intimidation.””

Racial Harassment in Washington State

Maree Sneed | 64
Racial Harassment in Pennsylvania

Racial harassment at Central Valley Middle School focus of meeting with parents, district administrators

By Sheldon Ingram, Pittsburgh’s Action News, March 30, 2022

- “MONACA, Pa. — Parents of Black students say it has been a yearlong problem with their children being the target of offensive racial gestures and names by white students.

- Specifically, at a Wednesday afternoon meeting with the Central Valley superintendent, Central Valley Middle School principal and the president of the school board, they said Black students were called primates with words, gestures.

- They also allege that a list was circulated last week that has the names of primates next to the names of students.

- "Each of the Black boys on the list are being connected to primates," said Daren Ellerbee, a relative of one of the students. "In this case, my nephew's name, right next to it is 'gorilla.' Another student's name, next to that name is 'monkey.'"
US Dept. of Education curbs decision on race-based ‘affinity groups’

By Carl Campanile, New York Post, March 7, 2021

• “The US Department of Education suspended a decision that found racial “affinity groups” discriminated against students and staff, The Post has learned.

• The goal of the programs — used by the New York City public school system and other school districts — is to separate students and staff by racial groups in order to help address discrimination and “white privilege.”

• But the practice of separating schools into racial groups is discriminatory, a determination obtained by the Post found.

• The findings — reached during the waning days of former President Trump’s time in office in early January — were in response to a complaint about a Chicago-area school district’s “racial equity” training programs and lesson plans.”
The 18-page “letter of finding” — drafted by federal DOE Office of Civil Rights enforcement director Carol Ashley — was triggered by a complaint filed by a former NYC arts teacher who now works in the Evanston-Skokie, Illinois. school district.

The DOE findings said the Evanston-Skokie School District violated civil rights law by:

- Separating administrators in a professional development training program in August, 2019 into two groups based on race — white and non-white.
- Offering various “racially exclusive affinity groups” that separated students, parents and community members by race.
- Implementing a disciplinary policy that included “explicit direction” to staffers to consider a student’s race when meting out discipline.
- Carried out a “Colorism Privilege Walk” that separated seventh and eight grade students into different groups based on race.
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Racial Affinity Groups Lawsuit in Massachusetts

Lawsuit forces school district to end racial affinity groups

By ALEC SCHEMMEL February 8th 2022

• “BOSTON (TND) — A Boston-area public school district will end racially segregated “affinity groups” after settling with nonprofit Parents Defending Education (PDE).

• The nonprofit, which says it empowers concerned citizens to become more engaged in the U.S. education system, sued the district last year. In the suit, PDE argued Wellesley Public Schools' use of racially segregated “affinity groups” violated the First and Fourteenth Amendments, Title VI of the Civil Rights Act of 1964 and the Massachusetts Students’ Freedom of Expression Law.

• This settlement sends a clear message that racially segregating students in public schools is wrong – and there will be consequences,” said the president of PDE Nicole Neily. “We have spent decades teaching our kids that racial segregation was and will always be wrong. We will not tolerate a return to segregation in 2022.”
Settlement in *Parents Defending Education v. Wellesley Public Schools*

- Settlement includes following provisions:
  - “WPS will not exclude students from affinity-based group sessions or any other school-sponsored activities on the basis of race.
  - “WPS will not identify affinity-based group sessions or any other school-sponsored activities as intended only for certain racial groups. For example, WPS will not identify an affinity-based group session as "for Black and Brown students" or "for Asian American students."
  - “When any affinity-based group session is held, WPS will provide notice of the event to all grade-eligible students, regardless of their race.”
  - “In all announcements of affinity-based group sessions (whether through email, school calendars, bulletin board postings, or otherwise) the posting will contain the following disclaimer: ‘This event is open to all students regardless of race, color, sec, gender identity, religion, national origin, or sexual orientation.’”
Students with Disabilities
Federal civil rights officials find Frederick County’s public schools engaged in improper use of restraints, seclusion for disabled students

By Fredrick Kunkle, Washington Post, December 1, 2021

• “Frederick County Public Schools staff made pervasive and improper use of restraints and seclusion when handling children with disabilities, federal civil rights officials said Wednesday, following an investigation into about 2½ years of data and documentation of the practice.

• The investigation found more than 7,250 instances involving 125 students as young as 5 years old who were improperly isolated or restrained by staff in non-emergency situations when other, less-intrusive or harmful interventions should have been used. Every instance of seclusion involved a student with disabilities, although disabled students account for only 11 percent of the district’s 45,000 students, the officials said. Of the students who were restrained, all but one was disabled.”
The Frederick County, Md., investigation, which was opened in October 2020, reviewed school data on behavioral interventions and focused primarily on school years 2017-2018, 2018-2019 and the first half of 2019-2020, officials said in a statement.

Eighty-nine percent of the reported seclusions and restraints occurred at Lewistown Elementary School and Spring Ridge Elementary School — the only district schools with programs to serve students with “significant social and emotional needs” — and at Rock Creek School, which is designed to serve students with severe intellectual or physical disabilities.

Under the settlement announced Wednesday, Frederick County school officials agreed to take corrective actions that include prohibiting the use of seclusion; reporting all instances of restraints and evaluating whether the use of restraints was justified; and provide additional training for staff to intervene in a more appropriate manner.
OCR Resolution of Compliance Review Regarding Restraints/Seclusions in Michigan District

U.S. Department of Education’s Office for Civil Rights Reaches Agreement to Resolve Restraint and Seclusion Compliance Review of Michigan’s Huron Valley Schools

JANUARY 19, 2022, Contact: Press Office, (202) 401-1576, press@ed.gov

• “The U.S. Department of Education’s Office for Civil Rights (OCR) today resolved a compliance review of the Huron Valley Schools near Detroit. The district entered a voluntary resolution agreement to take steps necessary to ensure that students with disabilities receive the free appropriate public education (FAPE) to which they are entitled, including requiring the district to review its use of restraint and seclusion; assessing whether students with disabilities who were subjected to restraint and seclusion require additional remedies or services, including compensatory education; and developing new systems for documenting the use of restraint or seclusion.

• “Huron Valley Schools has agreed to take important steps to ensure that students with disabilities in its schools receive the free and appropriate public education to which federal law entitles them,” said Assistant Secretary for Civil Rights Catherine E. Lhamon.

• OCR reviewed Huron Valley Schools as part of a series of 24 compliance reviews initiated nationwide related to restraint and seclusion, which began in January 2019. OCR’s investigation indicated compliance concerns, including students who were repeatedly subjected to restraint and seclusion that resulted in lost educational time and services, indications that the district did not re-evaluate whether students who were repeatedly restrained and secluded should receive additional or different supports, and the absence of accurate and complete documentation of the use of restraint and seclusion.”
“The district’s voluntary agreement to change its practices with respect to the use of restraint and seclusion, and its commitment to examine and remedy prior instances where restraint and seclusion of its students may have denied them a FAPE, reflect the district’s willingness to address the civil rights of its students. The district made significant commitments in the agreement, including, for example:

- Assessing whether students with disabilities who were subjected to restraint and seclusion from September 2017 through January 2022 were denied a FAPE and require compensatory education.
- Implementing a policy regarding the appropriate use and documentation of restraint and seclusion.
- Implementing a monitoring program to assess the district’s use of restraint and seclusion on a monthly basis and developing a policy and forms for documenting and tracking the restraint and seclusion of district students. And,
- Providing training to staff on restraint and seclusion, the district’s documentation policy and forms, and the requirements of Section 504 and Title II.”
OCR Resolution Agreement Re Restraint and Seclusion in Horry County Schools

U.S. Department of Education's Office for Civil Rights Reaches Agreement to Resolve Restraint and Seclusion Compliance Review of Horry County Schools in South Carolina

MAY 24, 2022, Contact: Press Office, (202) 401-1576, press@ed.gov

- “The U.S. Department of Education's Office for Civil Rights (OCR) on Monday resolved a compliance review of the Horry County Schools in South Carolina. The district committed to take steps necessary to ensure that students with disabilities receive the free appropriate public education (FAPE) to which they are entitled without unnecessary restraint or seclusion or missed instruction.

- OCR’s investigation identified concerns that students who were repeatedly subjected to restraint or seclusion lost educational time and services, and that the district did not re-evaluate students who were repeatedly restrained or secluded to determine whether they should receive additional supports or compensatory services.

- The district’s agreement to change its practices with respect to the use of restraint or seclusion, and its commitment to examine and remedy prior instances where restraint and seclusion of its students may have denied them a FAPE, reflect the district’s willingness to address the civil rights of its students.”
“The district’s commitments to resolve the investigation include:

• Revising its procedures and guidance documents on the use of restraint or seclusion.

• Clarifying the roles and responsibilities of those involved in monitoring and oversight of the district’s use of restraint or seclusion.

• Modifying its recordkeeping system.

• Creating a plan to accurately report data to the Civil Rights Data Collection.

• Training staff on the district’s procedures and new recordkeeping system.

• Reviewing files of currently enrolled students who were restrained or secluded since the start of the 2017-2018 school year to determine, in part, whether any student requires compensatory education for educational services missed due to incidents of restraint or seclusion. And,

• Implementing a monitoring program to assess the district’s use of restraint or seclusion.”
Ban on Restraints/Seclusions by Virginia District

**FCPS expands ban on restraints, set to fully end student seclusions**

*Angela Woolsey, FFX Now, March 17, 2022 at 11:15am*

- “Fairfax County Public Schools will officially end the use of seclusion as a tool for managing student behavior when the next school year begins on Aug. 22.

- The practice of confining a student to a room is already prohibited in most schools, but the Fairfax County School Board approved an update on March 10 that expands the ban to include the Key Center School, Kilmer Center, and private day and residential schools, starting with the 2022-2023 school year.

- Key Center in Franconia serves students with intellectual disabilities, severe disabilities, and autism, while Kilmer Center, located in Dunn Loring, is for students aged 5 to 21 with severe disabilities and autism. Their enrollment for the current school year is 60 and 62 students, respectively.”
OCR Resolution with LAUSD Re SWD during COVID-19

Office for Civil Rights Reaches Resolution Agreement with Nation’s Second Largest School District, Los Angeles Unified, to Meet Needs of Students with Disabilities during COVID-19 Pandemic

APRIL 28, 2022

- “The U.S. Department of Education’s Office for Civil Rights (OCR) today resolved an investigation of the Los Angeles Unified School District in California with an agreement requiring it to take steps necessary to ensure that students with disabilities receive educational services, including compensatory services, during and resulting from the COVID-19 pandemic.

- OCR investigated the district’s provision during the pandemic of the free appropriate public education (FAPE) to which federal civil rights law entitles students with disabilities. OCR’s investigation found that the district failed to provide services identified in students’ Individualized Education Programs (IEPs) and Section 504 plans during remote learning. For example, OCR found that during remote learning, the district:

  - Limited the services provided to students with disabilities based on considerations other than the students’ individual educational needs.
  - Failed to accurately or sufficiently track services provided to students with disabilities.
  - Directed district service providers to include attempts to communicate with students and parents—including emails and phone calls—as the provision of services, documenting such on students’ service records.
  - Informed staff that the district was not responsible for providing compensatory education to students with disabilities who did not receive FAPE during the COVID-19 school closure period because the district was not at fault for the closure. And,
  - Failed to develop and implement a plan adequate to remedy the instances in which students with disabilities were not provided a FAPE during remote learning.
  - The district agreed to resolve these violations by creating and implementing a comprehensive plan to address the compensatory education needs of students with disabilities due to the COVID-19 pandemic.”
“Through implementation of the resolution agreement the district will:

• Develop and implement a plan to appropriately assess and provide compensatory education to students with disabilities who did not receive a FAPE during the COVID-19 pandemic.

• Designate a plan administrator to implement the plan for assessment of compensatory education.

• Convene IEP and Section 504 teams to determine whether students were not provided the regular or special education and related aids and services designed to meet their individual needs during remote learning and determine compensatory education.

• Track and report to OCR the implementation of the plan for compensatory education. And,

• Conduct outreach to parents, guardians, students, and other stakeholders to publicize the plan for compensatory education and the role of the plan administrator.”
New Charter Funding Regulations
The administration’s goal in issuing the new rules is to prevent private companies from using federal dollars to open charter schools and to curb premature closures. Fifteen percent of the charter schools that receive funding from the program either never open or close before the three-year grant period is over, department officials have told Education Week.

The final rules provide a more flexible set of options for proving that a charter school is needed. Charter school applicants are able to demonstrate need by providing data on access to high-quality schools in the community, submitting information on waiting lists for existing charter schools, proving interest in a specialized instructional approach, or furnishing a copy of the needs analysis conducted as a part of the charter school application submitted to a charter school authorizer.”
“Collaboration with traditional schools not required

• The final rules also remove language that indicated charter school applicants would be required to partner or collaborate with a traditional public school. The initial proposed rules included the language as an effort to foster positive relationships between charter schools and their communities, allow for networking, and encourage innovative solutions to community issues.

• The final rules state that partnerships with public schools are strongly encouraged but not required.

• “These collaborations can bring more resources to charter schools and the students they serve, better meet the needs of English-learners and students with disabilities, and create professional learning communities for educators,” Hinton said. ‘However, we acknowledge that these types of collaborations may not be available in every district.’”
“Assuring no interference in desegregation efforts

- In the analysis, charter school applicants must also demonstrate that the new school wouldn’t negatively affect school desegregation efforts in the community. Applicants would have to describe steps they would take to avoid increasing racial or socioeconomic isolation in the public schools that would lose students to the charter school. Applicants that are already located in a racially or socioeconomically isolated community will still be considered for the funding as long as they aren’t creating an environment that further segregates based on race and socioeconomic status.

Collaboration with traditional schools not required

- The final rules also remove language that indicated charter school applicants would be required to partner or collaborate with a traditional public school. The initial proposed rules included the language as an effort to foster positive relationships between charter schools and their communities, allow for networking, and encourage innovative solutions to community issues.”
New Charter Funding (continued)

“Implications for the for-profit sector

• The new rules also take aim at for-profit charter organizations. Since his campaign in 2020, President Joe Biden has admonished charter schools that operate under for-profit companies, stating on the campaign trail that he’s “not a fan of charter schools.”

• Charter school applicants will have to prove they are not under the control of a for-profit company and divulge if they have or plan to contract with a for-profit education management organization. If schools do plan to contract with a for-profit organization, they’re required to include all of the details of their contract in their application, including the amount of federal money that would go toward the services under the contract, any conflicts of interest, and information on the governing board members of the for-profit organization.”
True/False
True or False? The Supreme Court ruled that coaches may pray in the locker room and on the field before and after games.

True or False? The Supreme Court decided that states may pay tuition for students to attend private religious schools.

True or False? A recent ruling by the Supreme Court says that schools cannot punish students for off-campus speech.

True or False? The Biden Administration has overturned the Trump Administration’s regulations related to sexual harassment under Title IX.

True or False? Justice Ketanji Brown Jackson graduated from a private high school in Miami.
Wrap Up/Questions