

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT

Late 2024-Early 2025

West Virginia School Board's Interview Committee's Decision Was Not Arbitrary or Capricious

On April 22, 2024, the Intermediate Court of Appeals of West Virginia reversed the decision of an administrative law judge's decision that Mingo Board of Education's selection decision for the principal position in Mingo County, West Virginia, was arbitrary and capricious.

In September 2020, Mark Blackburn applied for the principal position at a school in Mingo County. The Mingo Board of Education created an interview committee to fill the position. Each candidate was asked the same questions and given the same essay question to complete. Each candidate was scored based on the consideration of nine factors. After the interview process, the committee selected the most qualified candidate.

Mr. Blackburn was not selected for the position and thereafter filed a grievance regarding the committee's decision. Mr. Blackburn's grievance was originally denied and Mr. Blackburn subsequently appealed. A hearing was conducted by an administrative law judge ("ALJ") in November 2022. The ALJ found Mr. Blackburn had shown by a preponderance of the evidence that the selection process was flawed, the selected candidate was not the most qualified, and the decision to select that candidate was arbitrary and capricious.

The Mingo Board of Education appealed the decision. The Court agreed with the Board, finding that the interview committee considered all of the applicable factors for the position, the committee was entitled to determine the weight to apply to each criterion, and thus, the committee did not abuse its discretion in selecting the principal.

Find the decision [here](#).

Education Bills Which Became Effective July 2024

Florida Education bills that became effective July 2024:

HB 865- Youth Athletic Activities

This new law requires each athletic coach employed at a public school to have a valid coaching certificate. The certificate can be temporary, professional, or specifically for athletic coaching. The coach must also have a certification in cardiopulmonary resuscitation, first aid, and the use of an automatic external defibrillator.

Find the bill [here](#).

HB 931- School Chaplains

The new law allows school districts and charter schools to adopt policies to authorize volunteer school chaplains to provide support, services, and programs to students. The law sets out minimum requirements for the policy, including, that there be a description of the support, services, and programs, that the principal notify parents of the availability of such support, services, and programs, and that parental consent be acquired before a student participates in or receives support from such services or programs. Parents must be permitted to select a volunteer school chaplain from a list provided by the school district which also includes the chaplain's religious affiliation. The new law also sets out requirements for volunteer chaplains.

Find the bill [here](#).

HB 1285- Education

The new law made several changes to Florida's K-12 public schools and post-secondary institutions, including:

For Florida's K-12 public schools:

- Clarifying the process for students enrolled in approved virtual instruction programs or virtual charter schools to participate in statewide standardized assessments and assessments in the coordinated screening and progress monitoring system;
- Providing a definition for "classical schools," permitting an enrollment preference at classical charter schools for students who were previously enrolled in a public school that implemented a classical school model, and requiring the State Board of Education to establish a specialized teaching certificate for educators who teach in a classical school;
- Providing additional student populations a charter school can target in its enrollment process relating to the employment location of the parent or guardian;
- Providing requirements for turnaround schools applicable to the charter schools and the school districts in which such schools reside, and requiring the State Board of Education to adopt a standard charter school turnaround contract;
- Authorizing school districts to assign disruptive students to a disciplinary program or alternative-to-expulsion program;
- Requiring an academic intervention plan for each student enrolled in a dropout prevention and academic intervention program;
- Prohibiting school districts from identifying students as eligible to receive services through the dropout prevention and academic intervention program based solely on that student having a disability;
- Requiring school districts and charter schools to provide 11th and 12th grade students with an opportunity to take the Armed Services Vocational Aptitude Battery (ASVAB) exam and consult with a military recruiter;
- Creating limits for residents who are not parents or guardians of a student within the school district to object to educational materials; and
- Instituting the Purple Star School District Program.

For Florida's Postsecondary Institutions:

- Providing that proof of homestead exemption is a single conclusive piece of evidence for proving residency for tuition purposes;
- Repealing the Florida College System's Employment Equity Accountability Program (EEAP);
- Creating Associate of Arts specialized transfer degrees;
- Requiring school boards to make reasonable efforts to enter into dual enrollment articulation agreements with a Florida College System institution that offers online dual enrollment courses; and
- Prohibiting a public postsecondary institution from forbidding an applicant or student from being employed, subject to specified exceptions.

Find the bill [here](#).

HB 1317- Patriotic Organizations-

The new law defines a "patriotic organization" as a youth membership organization serving young people under the age of 21 with an educational purpose that promotes patriotism and civic involvement. The law authorizes school districts to allow representatives of these organizations the opportunity to speak and distribute informational materials in classrooms to encourage participation by students as well as have displays for the organizations at school to provide opportunities for student recruitment.

Find the bill [here](#).

HB 1473- School Safety-

This new law implements new changes for school safety and guardian programs. It requires private schools that participate in the guardian program to be responsible for costs associated with background screening and training. The law authorizes the sheriff providing the training to waive the costs. Individuals who are certified and in good standing by the Criminal Justice Standards and Training Commission are exempt from required school guardian training. The law changes the 12-hour diversity training to training on de-escalating incidents. The law establishes new parameters around door safety and requires school districts to develop discipline policies for personnel who knowingly violate school safety requirements. The Office of Safe Schools must develop a school safety compliance inspection report to document compliance with school safety requirements. The law also makes it unlawful for a person to knowingly or willfully operate a drone over a public or private school serving students from VPK-12th grade.

Find the bill [here](#).

Louisiana Judge Issues Preliminary Injunction Blocking Law Requiring Ten Commandments Be Displayed in Classrooms

In June 2024, the Louisiana legislature became the first state to sign into law a bill requiring that the Ten Commandments be displayed in public school classrooms. The law requires that a poster-size display of the Ten Commandments be posted in all public classrooms ranging from kindergarten to state universities. The law also authorizes, but does not require, the display of the Mayflower Compact, the Declaration of Independence, and the Northwest Ordinance. Parents of affected public school children filed suit, arguing the law violates the Establishment Clause and Free Exercise Clause of the First Amendment. On November 12, 2024, the District Court for the Middle District of Louisiana granted the Plaintiffs' Motion for Preliminary Injunction, finding that the law was facially unconstitutional and unconstitutional in application.

Find the law [here](#).

Read the complaint from the lawsuit [here](#).

11th Circuit Rules on Free Speech at School Board Meetings

The 11th Circuit issued an opinion addressing speech at school board meetings. A group called "Moms for Liberty," and several individuals, filed a lawsuit on behalf of their members arguing that their speech was "chilled and silenced" at school board meetings. Board policy permitted members of the public to speak for up to three minutes during portions of their meetings, however, statements that were "too lengthy, personally directed, abusive, obscene, or irrelevant" were barred. The Board's presiding officer found that some of their comments were "abusive," "personally directed," "obscene," or some combination of the three.

Plaintiffs brought suit, arguing the policies violated the First Amendment, both facially and as applied, and should be void for vagueness. The district court ultimately granted summary judgment to the Board, however, the 11th Circuit reversed, finding that in order to pass constitutional muster, the Board's policies must be viewpoint neutral and reasonable. The Court determined the Board's policy barring "abusive" speech was not viewpoint neutral because giving offense is a viewpoint. The Court determined the policy against personally-directed speech was unreasonable because it was arbitrarily and capriciously applied, did not serve the Board's purpose, and obstructed the Board's goal of educating the Board and community. Finally, the Court found the Board's policy precluding obscenity was not actually barring obscenity, it was unconstitutional as applied.

Find the opinion [here](#).

Biden Administration's Title IX Rule Struck Down by Kentucky Judge

On April 29, 2024, the United States Department of Education issued a Final Rule regarding the implementation of Title IX, providing that discrimination on the basis of "sex" includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Numerous states, including Florida, challenged the Rule. Nationwide, courts preliminarily enjoined enforcement of the rule. The Eleventh Circuit Court of

Appeals granted Plaintiffs' request for a rule-wide injunction pending appeal in Alabama, Florida, Georgia, and South Carolina.

On August 16, 2024, the U.S. Supreme Court rejected the Department's request for a partial stay of court orders in two separate district courts preliminarily enjoining enforcement of the rule, pending resolution of the appeals of those orders.

On January 9, 2025, a federal district judge in Kentucky vacated the new Title IX Rule and reverted back to the previous interpretation of Title IX, agreeing with Plaintiff states Tennessee, Ohio, Indiana, West Virginia, Kentucky, and Virginia, that the Department exceeded its statutory authority. The Court found that the Rule also violated the First Amendment because the definition of sex discrimination and sex-based harassment required Title IX recipients to use names and pronouns associated with a student's gender identity. The opinion states, "the First Amendment does not permit the government to chill speech or compel affirmance of a belief with which the speaker disagrees in this manner."

Find the opinion and order [here](#).

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