



*AN UPDATE ON CURRENT LEGAL  
ISSUES, AS ALWAYS WITH A SPECIAL  
EDUCATION TWIST*

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2024 Fall Conference

March 4, 20224



# *Fall Legal Issues Workshop*

*October 30, 31 and November 1, 2024*

**Classic Center  
Athens, Georgia**

***Veteran Administrators***

***New Administrators***

**ONLY LEGAL ISSUES WORKSHOP THIS  
SCHOOL YEAR**

***Groff v. Dejoy,  
(USSC 2023)***

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Evangelical Christian, believes Sunday is day of rest, works for US Post Office where belief posed no problem

Then along came Amazon

He moved to smaller, rural PO; switched days with other carriers; but then progressive discipline began and he quit

Filed EEOC complaint and eventual suit under Title VII

# *Groff v. DeJoy*

District Court granted summary judgment to USPS

Third Circuit affirmed based on previous USSC decision which it construed to mean "that requiring an employer 'to bear more than a de minimis cost' to provide a religious accommodation is an undue hardship."

Third Circuit concluded that exempting Groff from Sunday work "imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale."

USSC reversed unanimously

# *Groff – new standard*

“We think it is enough to say that an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.”

Refused to apply ADA standard

“Faced with an accommodation request like Groff’s, it would not be enough for an employer to conclude that forcing other employees to work overtime would constitute an undue hardship. Consideration of other options, such as voluntary shift swapping, would also be necessary.”

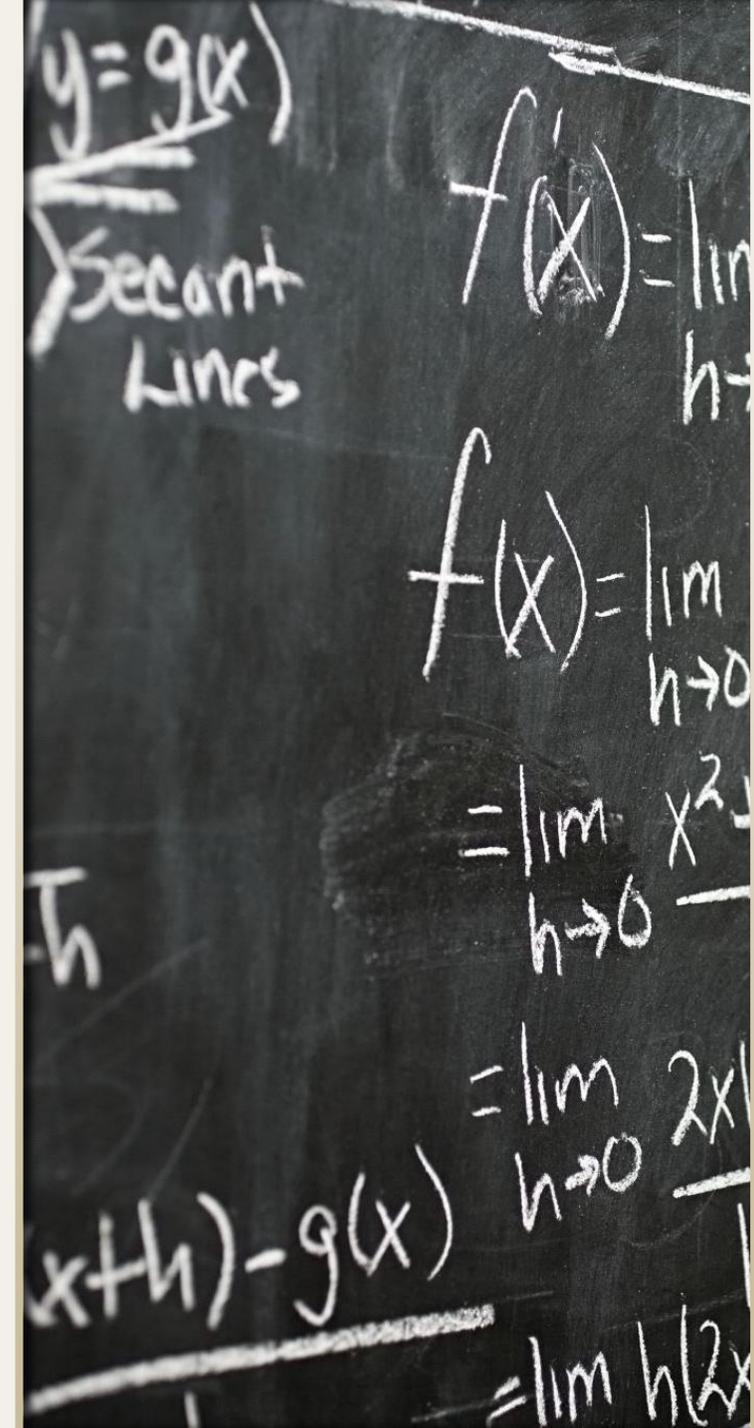
# What Does this Have to Do With Schools?

Kluge v. Brownsburg Community School Corp.

(7<sup>th</sup> Cir. 7/2023) – teacher claims right to religious accommodation not to use preferred pronouns or names of students

7th circuit upheld summary judgment below but then **withdrew decision, reversed and remanded denial of preliminary injunction to reconsider in light of Groff**

Issue is whether accommodation will cause undue hardship; balancing of teacher and student rights, and may involve parental rights



# *Teacher's Religious Belief*

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Kluge believes that gender dysphoria "is a type/manifestation of effeminacy, which is sinful." Kluge describes "effeminacy" as "for a man to play the part of a woman or a woman to play the part of a man and so that would include acting like/dressing like the opposite sex." In addition to believing that gender dysphoria itself is sinful, Kluge believes that it is sinful to "promote gender dysphoria." Because the transgender students changed their first names in order to "present[] themselves as the opposite sex," Kluge believes that calling those students by their preferred names would be "encouraging them in sin."

## *Seventh Circuit decision*

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Brownsburg has demonstrated as a matter of law that the requested accommodation worked an undue burden on the school's educational mission by harming transgender students and negatively impacting the learning environment for transgender students, for other students in Kluge's classes and in the school generally, and for faculty. Title VII does not require that employers accommodate religious practices that work an undue hardship on the conduct of the employer's business; that sometimes means that a religious employee's practice cannot be accommodated.

# *Status of Title IX Transgender Cases*

- *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla.* (**11th Cir., en banc, 7-4, December 30, 2022**)  
“Further ... equating “sex” to “gender identity” or “transgender status” under Title IX, as Adams would have us do as a matter of statutory interpretation, would touch upon the interests of all Americans—not just Adams—who are students, as well as their parents or guardians, at institutions subject to the statute.”



# *Status of Title IX Transgender Cases*

- *Metropolitan School District of Martinsville v. A.C. (7th Cir. August 1, 2023)* “Litigation over transgender rights is occurring all over the country, and we assume that at some point the Supreme Court will step in with more guidance than it has furnished so far. Until then, we will stay the course....”
- USSC denied cert January 16, 2024



# *Chevron v. National Defense Resources Defense Council (USSC 1984)*

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“First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute . . . Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.”

Supreme Court now considering the Chevron doctrine in [Loper Bright Enterprises v. Raimondo, Relentless, Inc. v. Department of Commerce](#)

*TITLE IX  
REGULATIONS ON  
SEXUAL  
DISCRIMINATION  
AND  
HARASSMENT,  
WHEN FINAL?  
WHEN  
EFFECTIVE?*





*New Title IX  
Regulations Will  
Include LGBTQ  
Students*

# *Proposed USDOE Regulation on Athletics*



**If a recipient adopts or applies sex-related criteria** that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, **such criteria must, for each sport, level of competition, and grade or education level:**

- (i) be substantially related to the achievement of an **important educational objective**, and
- (ii) **minimize harms** to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.

# *Title IX Sexual Harassment Regulations Sent to OMB on 2/2/24*

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## What Does It Mean?

Office of Information and Regulatory Affairs in OMB, a White House agency, has up to 90 days (subject to extension) to review and finalize the rule

The second part, the proposal on a proposed regulation governing participation in athletics, was not part of the submission

Likely finalization after school is out in June or July, 2024

Likely effective date for the start of the school year

Training, policies again

# *State of Tennessee v. USDOE*

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Motion by 20 states, including Georgia, to enjoin USDOE from enforcing informal guidance under Title IX, especially as to LGBTQ issues

Court granted preliminary injunction as to enforcement in the 20 states involved



# *Section 504*

# *New 504 Regulations...*

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May 6, 2022 Press Release

"The Department's Office for Civil Rights will solicit public comments to help decide how best to improve current regulations to assist America's students with disabilities."

"While the world has undergone enormous changes since 1977, the Department's Section 504 regulations have remained, with few exceptions, unaltered," said Assistant Secretary for Civil Rights Catherine E. Lhamon. "As we observe the 45th anniversary of these important regulations this month, it is time to start the process of updating them. Just as in 1977, the voices of people with disabilities must be heard and incorporated as we engage in that work."

# *When and So What?*

First prediction was Spring, 2023, then August 2023, then after Title IX  
Regs are Completed

Will draft even get issued before the election?

Most predictions are that a draft of new 504 Regulations will move what was once solely a non-discrimination statute into compliance model looking more like IDEA

# *USDOE Informal Guidance – Corporal Punishment*

- According to the Department's Civil Rights Data Collection (CRDC), the use of corporal punishment in school is either *expressly allowed* or *not expressly prohibited* in 23 states and researchers believe incidents of corporal punishment in schools is underreported.
- Students with disabilities served under the Individuals with Disabilities Act (IDEA) were overrepresented in receipt of corporal punishment. Students served under IDEA represented 13.2% of the student enrollment but 16.5% of the students who received corporal punishment.

# *Georgia Statute*

- “All area, county, and independent boards of education shall be authorized to determine and adopt policies and regulations relating to the use of corporal punishment by school principals and teachers employed by such boards.”  
O.C.G.A. § 20-2-730
- Be aware of CRDC numbers and potential claims based on race, national origin, disability, even sex

# *Woods v. Barnes (Ga. S.Ct. 2/20/24)*

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... [W]hen the General Assembly first authorized the creation of public charter schools through the Charter Schools Act of 1993, it granted charter schools a waiver from their obligation to comply with Title 20. That waiver qualified any rights teachers could subsequently earn under Title 20, clarifying that any such rights were not enforceable against charter schools. And later versions of, and amendments to, the Charter Schools Act, including the Charter Schools Act of 1998, as amended by the Charter Systems Act of 2007, have not materially changed the waiver provision. ...[I]t was the 1993 Charter Schools Act that imposed those limitations, not, as Plaintiffs claim, the 2007 Charter Systems Act. Because we conclude that Plaintiffs' Impairment Clause claims fail as a matter of law, we reverse the judgment of the trial court.

# *Woods v. Barnes (Ga. S.Ct. 2/20/24)*

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What Does It Mean?

Charter Systems have waived the FDA -at least as of 1993

Strategic Waiver Systems must review as of date that FDA was included as a code section waived in the SWS Exhibit B, still a question as to those earning tenure before that date and staying with the same school district or is it as of the date that FDA could be waived, which would be same as charter

Figure out the tenure options if you are a SSW system now, before you need to argue it



# *The General Assembly after Crossover*

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SB 351 - Protecting Georgia's Children on Social Media Act - would require local policy to prohibit access by students to social media platforms without "express authorization" of administrator or teacher

HB 874 - AEDs in every school, emergency action plan, internal response team and drills

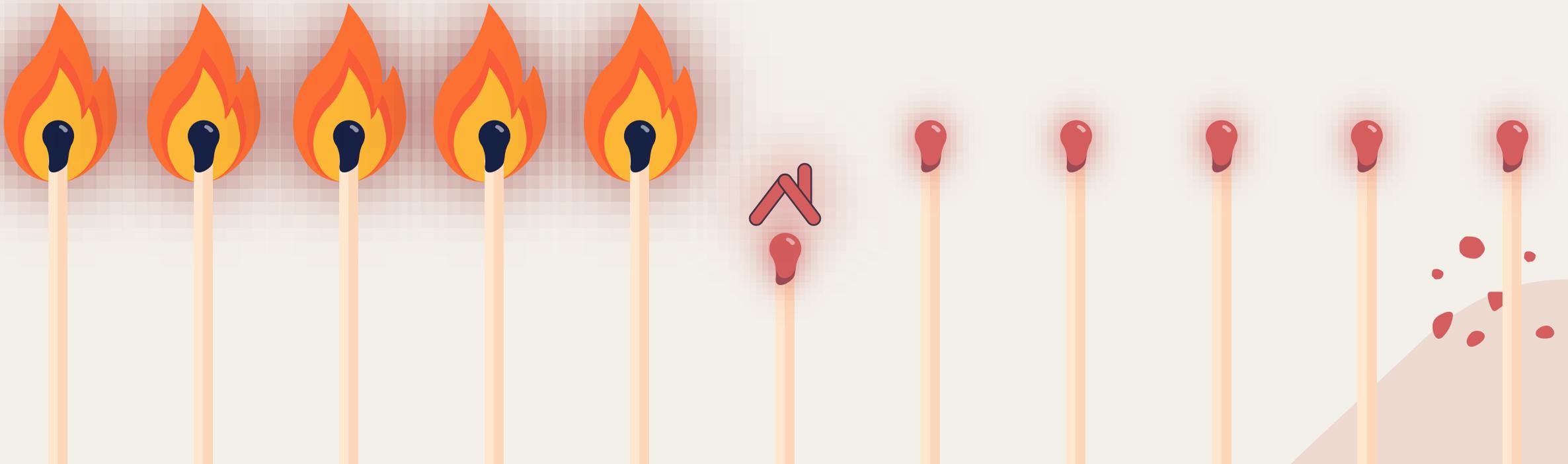
SB 395 - Naloxone allowed to be carried by employees, visitors, students and stocked at school

SB 180 Religious Freedom Restoration Act

HB 1010 - doubles paid parental leave



**ARE THERE MORE  
CULTURAL ISSUES  
FOR SCHOOLS  
ON THE WAY?**



*Introduced Bills, but expect more that could be added to cross over bills.....*

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SB 365 - Parents' option to get notice of books checked out of school library and expansion of Harmful to Minors Statute

HB 836 - Limits multi-stalled restrooms to one sex

SB 379 - Chaplains as counselors

**YES!**  
**TO PUBLIC SCHOOLS**

**NO!**  
**TO VOUCHERS**



BELIEVE IN  
PUBLIC  
EDUCATION





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EDUCATION**





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