IDEA/504 Legal Conflicts Never Shutdown: But Sometimes Can Be Avoided

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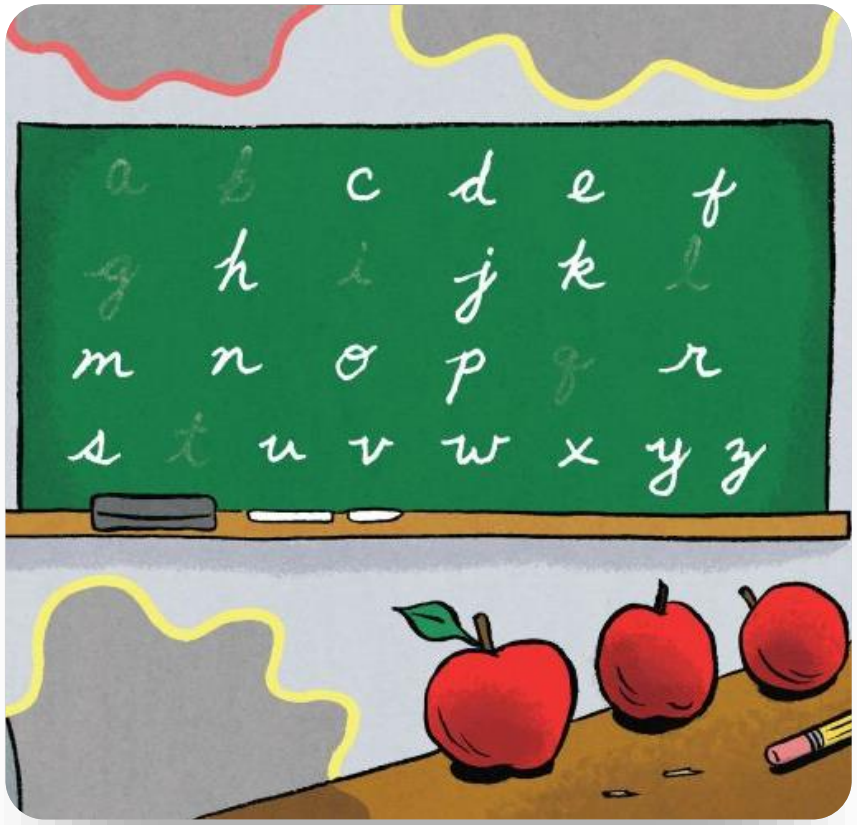
Mahmoud v. Taylor, 102 F.4th 191 (4th Cir. 2024), SCOTUS No. 24-297, Cert accepted 2024.

Do public schools burden parents' religious exercise when they compel elementary school children to participate in instruction on gender and sexuality against their parents' religious convictions and without notice or opportunity to opt out?

USSC – 6-3 – yes, given the opportunity to opt out in other situations and not allowing opt out here does not survive strict scrutiny



Mahmoud v. Taylor, 145 S.Ct 2332 (June, 2025)

- **Board of Education introduced a variety of "LGBTQ+-inclusive" texts into the school curriculum, including 5 storybooks approved for students in Kindergarten through 5th grade that had story lines focused on sexuality and gender.**
- **Parents sought to have children excused from instruction involving the books, and the Board permitted parents to have children excused from instruction.**
- **Board later rescinded opt out policy, including because it "could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment."**

Mahmoud v. Taylor, 145 S.Ct 2332 (June 27, 2025)

- Parents sued, claiming the lack of opt-out policy infringed on their right to free exercise of religion.
- Sought preliminary and permanent injunction "prohibiting the School Board from forcing [their] children and other students—over the objection of their parents—to read, listen to, or discuss" the storybooks.
- District Court denied relief.
- Fourth Circuit Court of Appeals affirmed decision denying relief

Mahmoud v. Taylor principles

- [W]e have long recognized the rights of parents to direct 'the religious upbringing' of their children."
- "And we have held that those rights are violated by government policies that 'substantially interfer[e] with the religious development' of children."
- "Such interference, we have observed, 'carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent.'"
- Relied heavily on *Wisconsin v. Yoder*, a 1972 Supreme Court decision that held that Amish parents did not have comply with compulsory attendance law past eighth grade, as it was contrary to the Amish religion and way of life and would endanger their own salvation and that of their children.

Mahmoud v. Taylor

- **“As we have previously held, when the government chooses to provide public benefits, it may not ‘condition the availability of [those] benefits upon a recipient's willingness to surrender his religiously impelled status.’ That is what the Board has done here. Public education is a public benefit, and the government cannot ‘condition’ its ‘availability’ on parents’ willingness to accept a burden on their religious exercise.”**
- **“[W]e conclude that the Board's introduction of the “LGBTQ+-inclusive” storybooks, combined with its no-opt-out policy, burdens the parents’ right to the free exercise of religion. We now turn to the question whether that burden is constitutionally permitted.”**

Mahmoud v. Taylor

“[W]e hold that the Board's introduction of the “LGBTQ+-inclusive” storybooks—combined with its decision to withhold notice to parents and to forbid opt outs—substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that *Yoder* found unacceptable.”

“Reverse” discrimination

Ames v. Ohio Department of Youth Services, 87 F.4th 822 (6th Cir. 2023), cert. granted Oct. 4, 2024.

Marlean Ames alleges she lost out on a promotion that she wanted, and then was demoted, simply because she is straight, in violation of Title VII, which prohibits discrimination based on sex.

Under the Supreme Court’s decision in *Bostock v. Clayton County* (2020), “sex” includes “sexual orientation.”

She alleges:

- ODYS hired a gay woman instead of Ames for a promotion for which she had applied.
- ODYS demoted Ames to a job that paid considerably less than her previous salary and hired a gay man to replace her.

“Reverse” discrimination

U.S. Court of Appeals for the 6th Circuit upheld the lower court’s ruling on summary judgement.

- Because Ames is straight, she was required to show “background circumstances” to support her allegations of reverse discrimination.
- Ames could not provide evidence that a member of a minority group made the allegedly discriminatory decision, or with evidence demonstrating a pattern of discrimination against members of the majority group.

What you should know:

- Supreme Court unanimously ruled in her favor.
- We will continue to see a rise in reverse discrimination claims.
- Employment discrimination claims in general have become easier to allege. Last term, the Supreme Court said employees have to allege “some” harm, not “significant” harm, to state a claim.
- But Title VII cases still have to go through the EEOC and a right to sue letter.

U.S. v. Skrmetti (USSC 2025)

Whether Tennessee Senate Bill 1, which prohibits medical treatments intended to allow a minor to identify with a purported identity inconsistent with the minor's sex, violates the Equal Protection Clause?

USSC holds no because statute distinguishes based on medical treatment and age, but not based on sex.

Little v. Hecox (9th Circuit)

- Transgender college athletes filed a federal lawsuit challenging a new Idaho law that banned transgender women from competing in women's/girls' sports.
- Idaho District Court issued preliminary injunction in favor of the student-athlete plaintiffs. "In short," explained the court, "the State has not identified a legitimate interest served by the Act that the preexisting rules in Idaho did not already address, other than an invalid interest of excluding transgender women and girls from women's sports entirely, regardless of their physiological characteristics."
- 9th Circuit affirmed injunction as applied to Hecox
- Cert granted by U.S. Supreme Court

Remember…

Fry v. Napoleon Community Schools

Perez v. Sturgis Public Schools

A.J.T. v. Osseo Area Schools, (8th Cir. 2024, cert. accepted)

- "That said, when the alleged ADA and Section 504 violations are 'based on educational services for disabled children,' a school district's simple failure to provide a reasonable accommodation is not enough to trigger liability. The district's 'statutory non-compliance must deviate so substantially from accepted professional judgment, practice, or standards as to demonstrate that [it] acted with wrongful intent.' **A.J.T. may have established a genuine dispute about whether the district was negligent or even deliberately indifferent, but under Monahan, that's just not enough.** (cites omitted)

A.J.T. v. Osseo Area Schools, (USSC 2025)

Schoolchildren bringing claims related to their education under either the **Americans with Disabilities Act** or **Section 504 of the Rehabilitation Act** are not required to make a heightened showing of “bad faith or gross misjudgment” but instead are subject to the same standards that apply in other disability discrimination contexts.

Unaimous decision by Court

- FEDERAL COURTS

A.W. v. Coweta County School Dist. (11th Cir. 2024), cert. denied

- Sped students alleged teacher, who lacked sped certification, physically and emotionally abused them, and that parapro reported multiple instances of abuse to principal, who delayed reporting to law enforcement or parents.
- District Court dismissed complaint, appealed to 11th Circuit
- 11th Circuit held that emotional distress damages are not recoverable under Title II of the ADA, but found the district court erred by not considering whether the students might be entitled to other relief under Title II, such as damages for physical harm or nominal damages.
- 11th Circuit also affirmed the dismissal of the section 1983 claims, ruling that the alleged abuse did not meet the "shock-the-conscience" standard required for a substantive due process violation

Lange v. Houston County (11th Cir. 2024)

- 2-1 decision that upholds sj for the sheriff's office transgender employee denied a sex-change operation by the County's insurer under the terms of the policy
- Majority: "The Exclusion is a blanket denial of coverage for gender-affirming surgery. Health Plan participants who are transgender are the only participants who would seek gender-affirming surgery. Because transgender persons are the only plan participants who qualify for gender-affirming surgery, the plan denies health care coverage based on transgender status."
- Dissent: "It's not discriminatory, it's just a cheap plan."
- Decision withdrawn and petition for review en banc granted

Lange v. Houston County (11th Cir. 2025), en banc 7-4 decision

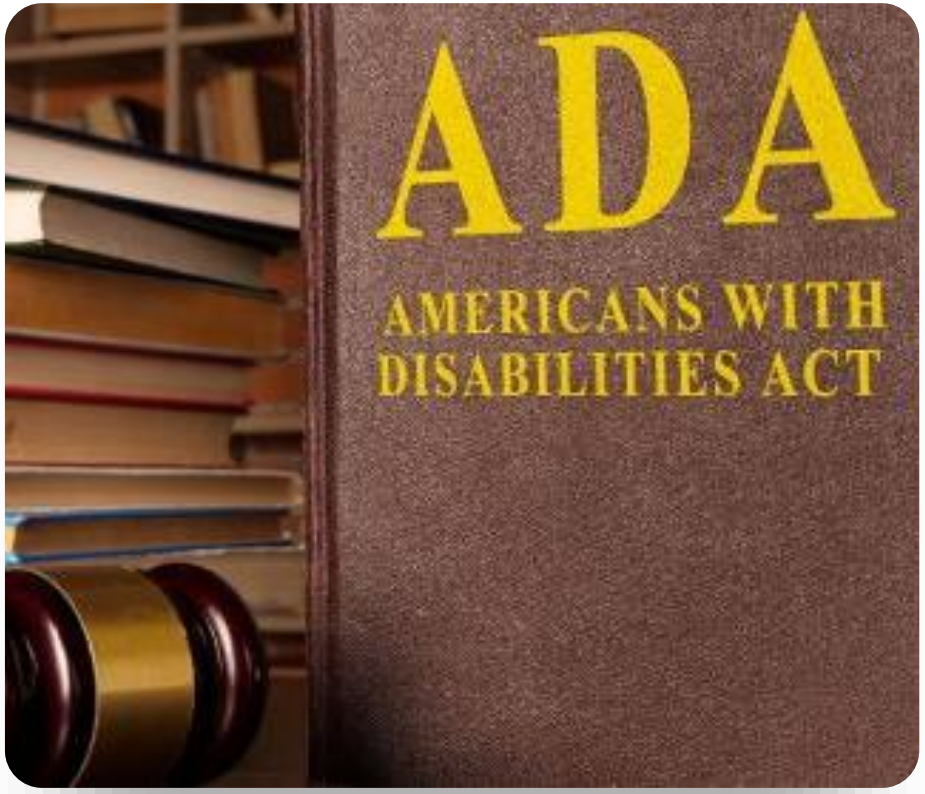
- "whether the insurance policy at issue, which covers medically necessary treatments for certain diagnoses but bars coverage for Lange's sex change surgery, facially violates Title VII based on a protected characteristic?"
- Relies heavily on *United States v. Skrmetti*, 145 S. Ct. 1816 (2025).
- "Neither the Supreme Court nor this Court has held that transgender status is separately protected under Title VII apart from sex. And *Bostock* did not add transgender status, as a category, to the list of classes protected by Title VII"

Stanley v. City of Stanford

Whether, under the Americans with Disabilities Act, a former employee — who was qualified to perform her job and who earned post-employment benefits while employed — loses her right to sue over discrimination with respect to those benefits solely because she no longer holds her job – District Court ruled for City

We thus reaffirm that a Title I plaintiff must "hold[] or desire[]" an employment position with the defendant at the time of the defendant's allegedly wrong ful act. - 11th Circuit

Cert granted by USSC



DeMarcus v. Univ. of South Alabama (11th Cir. 4/10/25)

- College volleyball players alleged that coach engaged in a pattern of sexual harassment and abuse, including inappropriate touching and forcing players to engage in uncomfortable physical interactions. They also claimed that the misconduct was reported to various university administrators and assistant coaches, who either witnessed or were informed of the abuse.
- District court dismissed Title IX and 1983 claim
- Dismissal affirmed by 11th Circuit

DeMarcus v. Univ. of South Alabama (11th Cir. 4/10/25)

- Players failed to state a Title IX claim because only certain university administrators were "appropriate persons" to receive notice of the misconduct, and the players did not provide sufficient actual notice of sexual harassment to those individuals. The court also found that the university did not act with deliberate indifference upon receiving the notice.
- Regarding the § 1983 claims, the court held that the players did not show that the university employees' conduct violated clearly established substantive-due-process principles and were not entitled to qualified immunity.

Ensuring Accountability for All Agencies

- **Sec. 7** . *Rules of Conduct Guiding Federal Employees' Interpretation of the Law*. The President and the Attorney General, subject to the President's supervision and control, shall provide authoritative interpretations of law for the executive branch. The President and the Attorney General's opinions on questions of law are controlling on all employees in the conduct of their official duties. No employee of the executive branch acting in their official capacity may advance an interpretation of the law as the position of the United States that contravenes the President or the Attorney General's opinion on a matter of law, including but not limited to the issuance of regulations, guidance, and positions advanced in litigation, unless authorized to do so by the President or in writing by the Attorney General.

Sec. 2. Closing the Department of Education and Returning Authority to the States.

"The Secretary of Education shall, **to the maximum extent appropriate and permitted by law, take all necessary steps** to facilitate the closure of the Department of Education and return authority over education to the States and local communities while ensuring the effective and uninterrupted delivery of services, programs, and benefits on which Americans rely."

Carter v. U.S. Dept. of Educ., (D. D.C. May 21, 2025)

The Court, on May 21, denied the Preliminary Injunction. It determined that the plaintiffs had not offered sufficient evidence demonstrating that OCR has failed to perform its statutory and regulatory duties, and that the plaintiffs' challenge that OCR will be unable to perform its duties represents a "broad programmatic attack" on the agency's operations that is not cognizable under the APA; not appealed but case stayed pending other decisions; not final order

NY v. McMahon, and Somerville Public Schools v. Trump, (D. Mass., May 22, 2025)

A Boston district court has enjoined the March 11 RIFs made at the U.S. Department of Education, finding the plaintiffs had shown "the massive reduction in staff has made it effectively impossible for the Department to carry out its statutorily mandated functions. … As fully explained below, a preliminary injunction is warranted to return the Department to the status quo such that it can comply with its statutory obligations."

On July 14, 2015, the USSC blocked the injunctions in a 6-3 shadow docket decision, not a final decision on the merits

What is happening to programs and departments at the USDOE dealing with disabled students?

- Since March 2025, the Trump administration has aggressively downsized the Department of Education as part of an executive order and broader plan to dismantle it by **December 2026**.
- **Over 400 employees** were laid off in October 2025, including:
  - **121 staff from the Office of Special Education and Rehabilitative Services (OSERS)**.
  - Nearly all staff from the **Office of Special Education Programs (OSEP)**, which monitors IDEA compliance and provides technical assistance.
  - Significant cuts to the **Office for Civil Rights (OCR)**, which enforces Section 504 protections.
  - As of now, **OSEP has fewer than six employees**, making federal oversight of IDEA almost nonexistent.
  - On March 11, 2025, the Department of Education announced its plans to reduce 50 percent of its workforce through deferred resignation, voluntary separation, early retirement, and RIFs. Lawsuits against the federal government initially led to an emergency motion to stop the department from carrying out potentially unlawful layoffs. On July 14, 2025, the U.S. Supreme Court reversed the district court decision through a shadow docket process and allowed the federal government to continue its layoffs as the case progresses through the courts.

Latest on USDOE

- **Impact on IDEA and Section 504 Programs**
- **Funding:** IDEA funds ($15 billion annually) are still authorized by Congress, but partisan budget fights continue.
- **Monitoring:** Federal monitoring of states for IDEA compliance is collapsing. States now have wide discretion, which could lead to inconsistent protections.
- **Section 504 Enforcement:** OCR's capacity to investigate disability discrimination complaints is drastically reduced. With only ~120 staff left, caseloads are overwhelming

Section 504 and enforcement

- Lawsuits are ongoing and then more appeals.
- Section 504 regulations remain largely unchanged since 1977, and recent attempts to update them have stalled.
- The lawsuit filed by Texas, Georgia and other State AG's challenging proposed section 504 regulations in healthcare is in a holding pattern although constitutional challenge to section 504 has been dismissed.
- Look for more administrative complaints at the State level.
- Look for more due process hearings and litigation.
- Be more aware of cases that could go on and on and find a reasonable way to resolve them.
- But what does the future hold for federal enforcement of IDEA/504?


NATHAN DEAL JUDICIAL CENTER

Wilson v. Anderson, 374 Ga.App. 668 (3/10/25)

Lawsuit claimed that the SRO informed school administration that a student had a knife at school and was threatening to use it on others, including A.L. Administration did not investigate the threat. The next day, another SRO informed administration that the same student had a knife at school and was threatening to use it on others, including A.L. Administration did not investigate this threat either. On that day, the student began to threaten A.L. while walking to the gym, and attacked her in the gym, stabbing her 14 times.

Wilson v. Anderson, 374 Ga.App. 668 (3/10/25)

Student and Parent Handbook:

- **"Any teacher or other school employee who, in the exercise of his or her personal judgment and discretion, believes he or she has reliable information that would lead a reasonable person to suspect that someone is a target of bullying shall immediately report it to the school principal. *Any report will be appropriately investigated* by the administration based on the nature of the complaint and in a timely manner to determine whether bullying has occurred, whether there are other procedures related to illegal harassment or discrimination that should be implemented and what other steps should be taken."**

Handbook defines bullying to include "[a]ny willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so[.]"

- **"We hold that one student having a knife on campus and threatening to use it against another student on campus meets the definition of 'bullying' as contained in the Handbook."**

Wilson v. Anderson, 374 Ga.App. 668 (3/10/25)

Administrators filed motion to dismiss based on official immunity.

“Accordingly, we must analyze whether a report of bullying triggers a ministerial duty for the Administrators. We hold that it does, even though the Administrators subsequently enjoy discretion as to the nature of the investigation. As this Court has held, while ‘the act of establishing a policy in the first place is discretionary, the act[ ] of following established polic[y] ... [is] ministerial.’”

Wilson v. Anderson, 374 Ga.App. 668 (3/10/25) cert. denied by Ga. S. Ct.

“Here, the Handbook specifically requires that “[a]ny report [of bullying] will be appropriately investigated by the administration[.]” While the Handbook leaves it to the administration's discretion what level of investigation would be appropriate given “the nature of the complaint[,]” and that the investigation must occur “in a[n undefined] timely manner[,]” the Handbook clearly states that an investigation is required after a report of bullying is brought to the principal.”

2026 General Assembly

Everybody is running for something and many not for the seat they hold

Race to make an impression probably means tax cut legislation and cultural divide legislation, especially aimed at the primary

Be wary of local legislation

BELIEVE IN PUBLIC EDUCATION