



Montgomery County ESC
with David Lampe

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ATTORNEYS AT LAW

Today's agenda

- Recent Legislation

- Cell phones
- Student expression
- Religious expression days
- Bullied student-athletes
- Student data privacy

- Recent Cases

- Hot Topics

- Discipline
- Vaping
- Transgender Student Issues





Legislation Regarding Student Issues

H.B. 250 – Student cell phone use policy

(Updates R.C. 3313.753 – *effective Aug. 14, 2024*)

- By **July 1, 2025**, boards must adopt student cell phone use policy
 - Policy must:
 - ✓ Emphasize that student use “be as limited as possible during school hours” and
 - ✓ Reduce related distractions in classroom settings
 - May permit use for student learning or to monitor/address health concern if:
 - Board determines appropriate; or
 - Included in 504/IEP plan
- DEW released model policy:
 - Prohibits cell phones at all times
 - Allows storage in secure place



H.B. 214 – Student Expression and Religious Expression Days

(New R.C. 3319.614 and R.C. 3320.04 – effective Oct. 23, 2024)

Student Expression (R.C. 3319.614)

- By **January 21, 2025**, boards must adopt a policy that states:
 - ✓ District will **not** “solicit or require a student to **affirmatively ascribe** to specific beliefs, affiliations, ideals, or principles **concerning political movements, or ideology.**”
 - ✓ District will not use “statements of commitment” to the above as part of the **academic evaluation of students**
- Does not prohibit, limit, or restrict District’s authority to:
 - Comply with anti-discrimination laws
 - Offer character education program

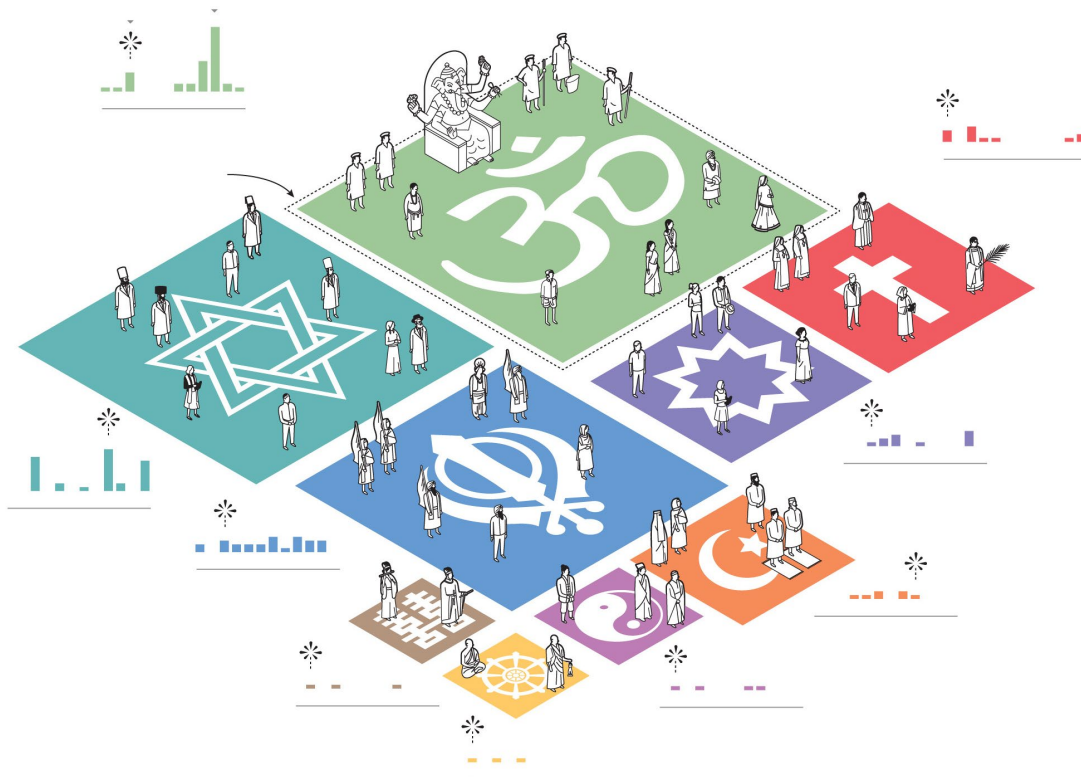


Tinker v. Des Moines (U.S. 1969)

Must make policies, guidance, and training material publicly available

H.B. 214 – Student Expression and Religious Expression Days

(New R.C. 3319.614 and R.C. 3320.04 – effective Oct. 23, 2024)



Monica Serrano, *National Geographic* – Who Celebrates the Most?

Religious Expression Days (R.C. 3320.04)

- By **January 21, 2025**, boards must adopt a policy that “reasonably accommodates the sincerely held religious beliefs and practices” of students, with regard to:
 - ✓ All examinations or other academic requirements; and
 - ✓ Absences for reasons of faith/religion/spiritual belief system
- Must permit students to be absent for up to **3 religious expression days per school year**

H.B. 214 – Student Expression and Religious Expression Days

(New R.C. 3319.614 and R.C. 3320.04 – *effective Oct. 23, 2024*)



Religious Expression Days (R.C. 3320.04)

- Cannot:
 - Impose an academic penalty
 - Prohibit participation in sports or extracurricular activities on the same day
 - Inquire into sincerity of student’s religious/belief system
- ✓ Must provide alternative accommodations with regards to examinations and other academic requirements if notice provided of the dates within 14 days of first day of school (or transfer/enrollment)
- ✓ Must post policy and nonexhaustive list of major religious holidays, festivals, and observations on website.
- ✓ Must convey policy and procedure **annually** to parents.
- ✓ Must include a procedure for parent to grieve implementation of policy.
- ✓ Religious expression days do not count towards “absence hours” for purpose of parental notification (i.e., considered a legitimate excuse).

H.B. 147 – Bullied student-athletes; school event ticketing

(Enacts R.C. 3313.5313, updates R.C. 3313.5319 – *effective Oct. 21, 2024*)



Bullied student-athletes

- Superintendent may allow student from another district to participate in their interscholastic athletics program if student was subject to certain actions by a school official, employee, volunteer, or another student from resident district
- Actions include:
 - Harassment, intimidation or bullying;
 - An offense of violence or importuning;
 - A licensure code of professional conduct violation



Ticket prices for school events

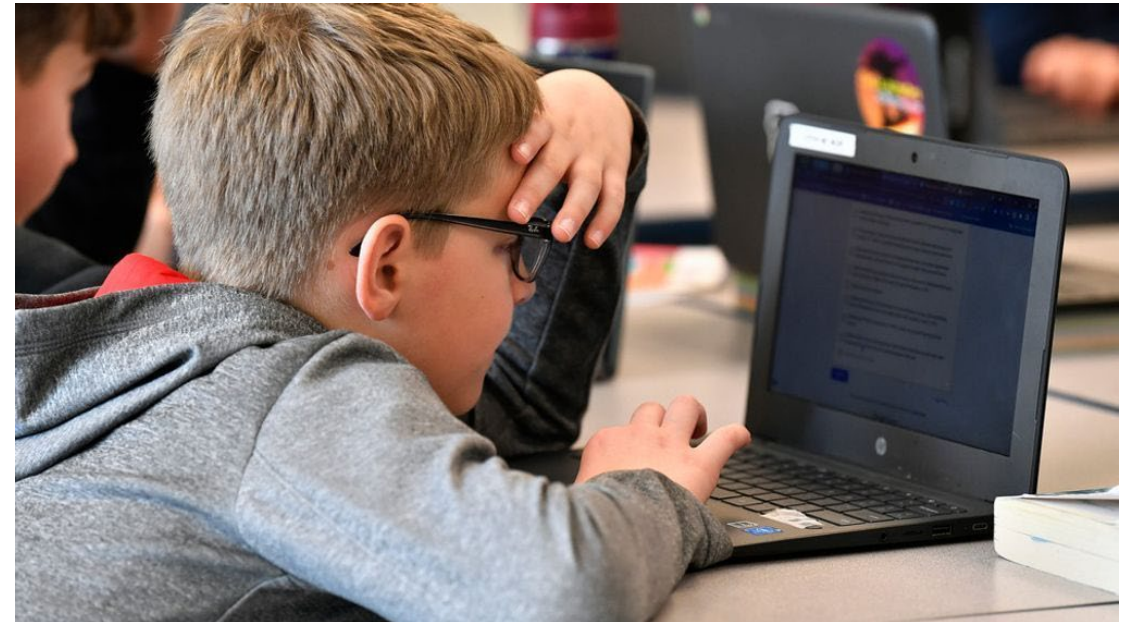
- Cannot be different for cash versus card, except processing fee for card

S.B. 29 – Student data privacy

(Enacts R.C. 3319.325-327, updates R.C. 149.43, 3319.31 – effective Oct. 21, 2024)

Tracking/recording of school-issued devices

- District cannot “electronically access or monitor” certain features except in specific circumstances
 - Location-tracking features
 - Audio or visual receiving, transmitting, or recording features
 - Student interactions (e.g., keystrokes and web-browsing)
- **Exceptions:**
 - Device is missing/stolen
 - Activity is permitted under a judicial warrant
 - Educational purpose for instruction, technical support, or exam-proctoring – *requires advance notice*



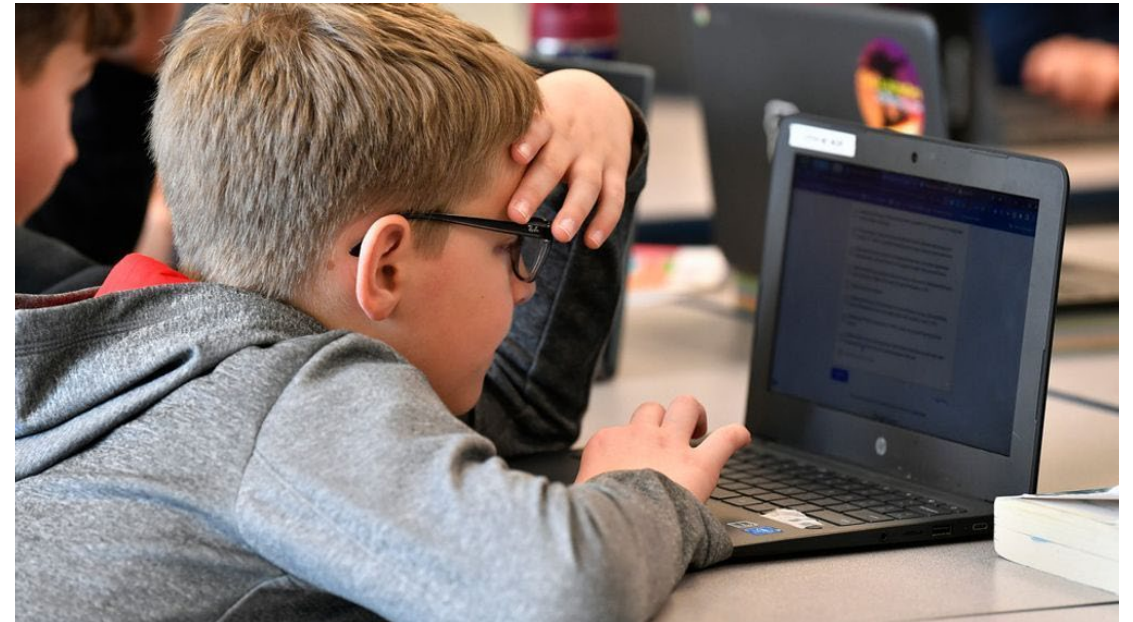
- Necessary to comply with federal or state law
- Necessary to participate in federal/state funding program
- Necessary to prevent or respond to a threat to life or safety, and the access is limited to that purpose

S.B. 29 – Student data privacy

(Enacts R.C. 3319.325-327, updates R.C. 149.43, 3319.31 – *effective Oct. 21, 2024*)

Tracking/recording of school-issued devices

- If District chooses to use an exception, must provide written notice to parent
- If circumstance is “triggered,” District must notify parent via written notice within 72 hours of the access
 - Describe triggering circumstance
 - Which features of access were accessed
 - Description of threat, if any
- Can delay notice if notice itself would pose threat to life/safety



S.B. 29 – Student data privacy

(Enacts R.C. 3319.325-327, updates R.C. 149.43, 3319.31 – effective Oct. 21, 2024)

Technology Provider Requirements

- Contracts between a technology provider and school district must ensure appropriate security safeguards for educational records
 - No unauthorized access by the technology provider's employees or contractors;
 - Access to educational records only as necessary to fulfill the official duties (no commercial purposes, advertising);
 - All education records are property of District.

Google Workspace for Education



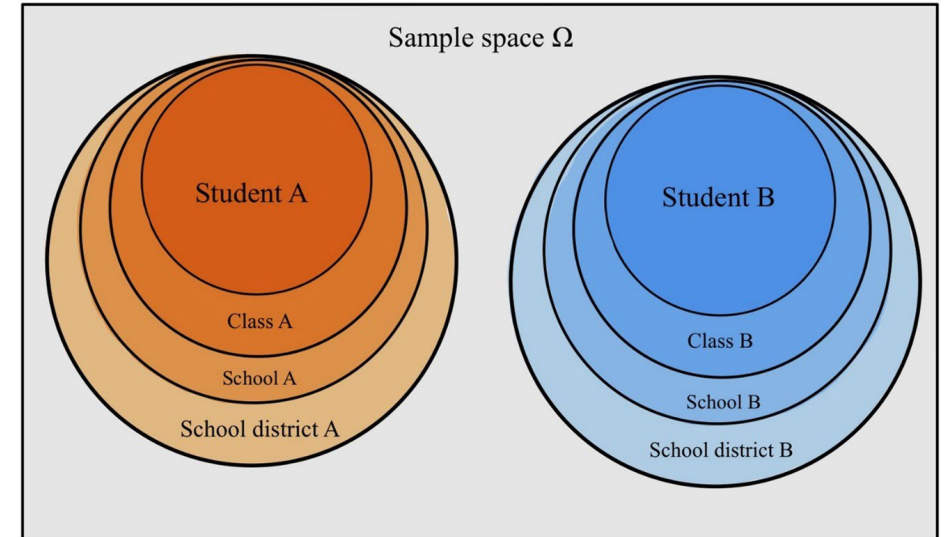
- **By August 1 of each school year,** must notify parents and students of any curriculum, testing, or assessment technology provider contract affecting a student's educational records and offer opportunity to inspect a copy of technology provider contract.

S.B. 29 – Student data privacy

(Enacts R.C. 3319.325-327, updates R.C. 149.43, 3319.31 – effective Oct. 21, 2024)

“Educational Support Services Data”

- “Data on individuals collected, created, maintained, used, or disseminated relating to programs administered by a school district board of an education or an entity under contract with a school district designed to eliminate disparities and advance equities in educational achievement for youth by coordinating services available to participants.”
- Prohibited from releasing/permitting access to this data concerning any student “unless otherwise provided by law”



- Also **not a public record**

H.B. 68 – Save Women’s Sports Act and SAFE Act

Overrode Governor’s veto, *effective 04.24.2024* - **but currently enjoined**

Save Women’s Sports Act

- Teams must be designated based on the sex of participants
- Must not knowingly allow a male to participate on a female team
- Creates a private right of action if rights are deprived and for retaliation for reporting violation

SAFE Act

- Requires mental health professionals to obtain consent of a parent before diagnosing or treating a minor for a gender-related condition
- Minor must also be screened for physical, sexual, mental and emotional abuse and other trauma

- Enjoined on April 16, 2024 from enforcement under “Temporary Restraining Order” (Franklin Co. Court of Common Pleas)
- *At the same time* - **OHSAA modified Bylaw 1-6-3 to comply:**
 - Male to female transgender student may not participate on girls teams
 - Monitor release of 24-25 Handbook to see if any changes are made





Recent Cases Regarding Students

SC v. Metropolitan Gov't of Nashville & Davidson County

(6th Cir., 11/15/2023)

- Student alleged she was video-recorded engaging in unwelcome sexual contact which was shared on social media
- Student and her family were threatened after participating in school district's investigation
- District was aware of ongoing threats, and of the educational disruption the student experienced
- Student was hospitalized and moved out of district
- School employees did nothing in response other than telling student to contact the police
- School argued that it did not control the context in which most of the threats occurred: social media
- Court found that although the school did not control the physical location of the threats, it had disciplinary authority over the students involved as demonstrated by school's discipline of students involved in circulating the video

Sixth Circuit finds district liable under Title IX for its deliberate indifference to social media threats



Jane Doe, et al. v. Ohio Hi-Point School Dist. Bd. of Educ.

(S.D. Ohio, 02/12/2024)

***School board not
deliberately indifferent to
student harassment***

- Court ruled school was not deliberately indifferent to student-on-student sexual assault and harassment a student with disabilities alleged she experienced during the approximately two-month period she attended the school.
- “In sum, Jane Doe attended Hi-Point for about two months. The school spent about a month and a half of those two months investigating her complaints of sexual harassment and bullying. The school took many steps to attempt to keep Jane Doe safe—from no contact orders to changing class schedules to meetings and many interviews to attempting to change her busing situation. These actions do not demonstrate conscious disregard to known risk to Jane Doe.”



Place v. Warren Local School Dist. Bd. of Educ.

(S.D. Ohio, 03/06/2024)

- Student alleged she was cut from the basketball team her senior year in retaliation for complaints raised by her parents.
- Parents' complaints were protected under the First Amendment. It was clearly established that a school official may not retaliate against a parent for the content of a parent's speech.
- Genuine dispute of material fact as to whether decision to cut the student from the team was caused by the parents' speech.
- Coach and school board not entitled to immunity for alleged First Amendment violation. Student submitted evidence of a school policy that a student would be suspended for one game if a parent made a negative social media post and refused to remove it, and jury could find this showed a custom of approving retaliation for protected speech.

Jury must decide whether coach and school violated student's First Amendment and due process rights





Hot Topics

Student Discipline – The Basics

- *Code of Conduct*
 - Specify prohibited conduct and consequences
 - Post in a central location and make available upon request
- *On campus vs. off-campus*
 - May discipline student for off-campus misconduct if:
 - Authorized by Board policy;
 - Misconduct connected to school activities, or
 - Misconduct directed toward school employee or their property
- *Due Process*
 - Who may suspend? Who may expel?
 - What must happen before suspension/expulsion?
 - What if the student withdraws before expulsion?



Student Discipline - Searches

Reasonable Suspicion Standard for Searches

Is the search justified?

Are there reasonable grounds to suspect the search will produce evidence of a violation?

Is the search reasonable in scope?

- Student age and gender
- Nature of alleged violation
- Time, place, and scope of search
- Who will conduct search



Student Discipline - Expulsion

- Authority must be in Board policy
- Permitted reasons:
 - Firearm possession
 - Knife possession
 - Commission of a violent act that causes serious physical harm to persons or property
 - Participation in a bomb threat



Student Discipline - Abeyance

- Option to enter agreement with parent to **conditionally modify or hold in abeyance** a disciplinary consequence
- Conditions could include (but are not limited to):
 - Removal of discipline from student's record if certain conditions are met (e.g., no additional misconduct for certain period of time)
 - Educational services in an alternative setting provided during period of removal, contingent on good behavior
- Such an agreement should include waiver of right to appeal the discipline



Student Discipline – Special Issues



Referral to Law Enforcement

- School may report crime, but must ensure copies of the child's special ed and disciplinary records are transmitted for consideration by the appropriate authorities in accordance with law (i.e., FERPA)

Each **Child**
Means
Each **Child**

Ohio's Plan to Improve Learning
Experiences and Outcomes for
Students with Disabilities

Special Searches

- Locker searches (random searches may be authorized)
- Drug-detecting dogs
- Motor vehicle searches
- Cell phone searches



Student Discipline – Special Categories

Each **Child**
Means
Each **Child**

Ohio's Plan to Improve Learning
Experiences and Outcomes for
Students with Disabilities



Students with Disabilities

- Manifestation Determinations
- Day 11 Services
- Special Circumstances Involving Safety

Students in PK-3

- May only be out-of-school under certain circumstances
- Must consult with mental health professional prior to expulsion/suspension



Vaping – The Basics

- *Also known as*
 - E-cigarettes or e-cigs;
 - Mods, pods or tanks systems;
 - JUULs or Puff Bars (or another brand name);
and
 - Electronic nicotine delivery systems or ENDS.
- *An “alternative nicotine product”*
 - Illegal to distribute or permit children to use (R.C. 2927.02)



Vaping – Health Education

- Now required to cover as part of comprehensive health education.
- Instruction must include the harmful effects and legal restrictions against the use of drugs, alcoholic beverages, and tobacco, including electronic smoking devices.
- DEW has listed educational programming for all grade levels

Programming

Listed below are educational programs which contain information on electronic smoking devices. Health education instruction must include information on both the harmful effects of and legal restriction of tobacco, including electronic smoking devices. Not all the programs listed below include information on the legal restriction of electronic smoking devices. (Review [Ohio law](#) for additional information on legal restrictions).

Programs which meet the legislative requirements have been marked with an asterisk.

[CATCH My Breath*](#)

Audience: Grades 5-12

- » A youth e-cigarette, JUUL, and vape prevention program. The program consists of four 30-minute lessons.
- » The program is available at no cost, is evidence-based and includes instruction on both the harmful effects of and legal restriction of electronic smoking devices.

[You and Me, Together Vape-Free Curriculum](#)

Audience: Elementary, Middle and High School

- » This an educational resource is aimed at preventing students' use of tobacco and nicotine products. The middle and high school programs are 6 lessons that are approximately 50 minutes each. The elementary school program is two-lessons that are approximately 50 minutes each.
- » The program is available at no cost. The lessons are theory-based and evidence-informed and were created by the Stanford REACH Lab and include instruction on the harmful effects of electronic smoking devices.

[Vaping: Know the Truth](#)

Audience: Grades 8-12

- » An online course with four lessons on the dangers associated with using e-cigarettes and resources to help young people quit if they already vape.
- » The program is available at no cost and includes instruction on the harmful effects of electronic smoking devices.

[Know the Risks: A Youth Guide to E-cigarettes](#)

Audience: Ages 11-18

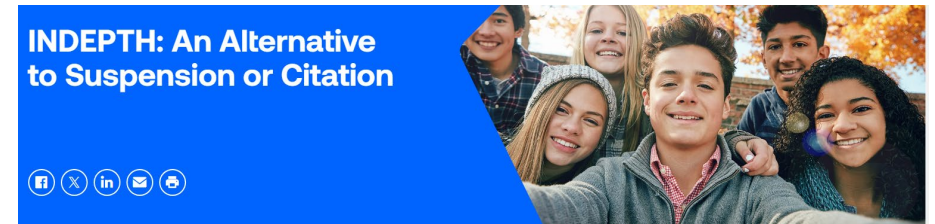
- » A presentation attended to educate youth on e-cigarettes, including the health risks, the factors that lead to e-cigarette use, and what youth can do to avoid all tobacco products. Estimated presentation time is 45 minutes.
- » The program is available at no cost and includes instruction on the harmful effects of electronic smoking devices.



Vaping – Alternatives to Suspension

- DEW guidance states:

“The purpose of alternatives to suspension is to keep students in school and learning. Violations of tobacco policies can be addressed using supportive disciplinary practices, which focus on recovery and reduction of tobacco product use and dependence.”
- DEW links to two programs:
 - American Lung Association: *Intervention for Nicotine Dependence: Education, Prevention, Tobacco and Health* (INDEPTH)
 - Stanford Univ: *Healthy Futures*



Transgender Student Issues

Where are we?

- Back and forth in courts between federal and state authorities with different views
 - **Title IX** - Prohibits **sex-based discrimination** in **educational programs** receiving federal financial assistance
- What is “sex”?
 - Recent Ohio law – Defines “sex” as “biological indication of male and female” (**law currently enjoined**)
 - Recent Title IX regulations – Doesn’t further define sex but preamble states protections are extended to transgender students (**regulations currently enjoined**)



Bostock's Evolving Impact on Defining "Sex"

- 2020 US Supreme Court decision
- “An employer who fires an individual **merely for being gay or transgender**” violates **Title VII**



Disclosure to School Personnel and Others

- Generally recognized that students have a **privacy interest** in their sexual orientation or gender identity
- School personnel **generally not permitted to “out” students** without consent
 - Including to staff members with no legitimate educational interest in that information
 - Including to other students or other students’ parents



Disclosure to the Student's Own Parent

- FERPA grants parents the **right to personally identifiable information about their child**, which would include info about the **student's transgender status** or **preferred names or pronouns**
- **No legal exception** right now which would permit a district to withhold this information from the parent
- Consider what resources are available to support the student
- Remember school personnel's **mandatory reporting** obligation if there are concerns about an unsafe situation at home



Considerations Before Changing Policy

- Does the District **need** a policy?
- Where does your **school community** stand?
- Are any **advocacy organizations or other organized groups** involved in instigating or supporting litigation in your district?
- What **costs** might the District face – not just monetarily, but in terms of impact on personnel, public opinion, etc.?
- Based on current state of case law, **difficult to predict** whether a district can prevail if a policy change is challenged



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Thank you!

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