

May 10, 2022

Dr. Curtis Culwell
Executive Director
Texas School Alliance

Via email: curtis@texasschoolalliance.org

Re: TSA Federal Update

Dear Dr. Culwell:

The following information is provided relative to the federal issues of concern to TSA.

1. Charter School Regulations.

The Biden administration has proposed more stringent regulations at the federal level to which charter schools must adhere before being eligible to participate in the Public Charter School Grant Program. TSA issued comments in support. Reminder, at one point in the Presidential election, Biden promised to end federal support for charter schools. This proved impossible due to current legislation. Charter schools have begun an organized pushback to the proposed regulations, claiming they will end good charters and remove choice for poor and minority students. So far, no response to this pushback from the Administration.

2. Legislation.

A new COVID relief package is being drafted. There is hope that some of that will carve out specific funds dedicated to school efforts. Proving that politics makes for odd bedfellows, the latest Ukraine package may also partially address the school lunch waiver cessation (June 30, 2022) and will contain key flexibility for school meals along with an increased amount for reimbursement. Universal meals, as we previously enjoyed, however, is dead.

3. Regulations.

The Biden administration announced two important regulatory updates:

A. Title IX.

The Title IX regulations will now be released in June, 2022, not April, 2022 as previously promised. These regulations will likely contain more stringent requirements for school districts and colleges, similar to those in effect prior to the current regulations issued under Betsy DeVos. If the regulations go into effect in the fall, school districts will need to pay careful



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attention to in-service requirements over the summer. It would be anticipated that TSA will want to comment on the proposals.

B. Section 504.

The Education Department announced that it will take public comment on revising the federal regulations to Section 504 of the Rehabilitation Act of 1973. The comment period is only for thirty days. Following the receipt of comments, the Department said it will promulgate new regulations to address, in part, compensatory education and the current mental health “crisis” which were brought upon by the pandemic. This will be accomplished via a traditional NPRM. The Department last issued regulations in 1977, thus, this announcement is quite significant. Again, it is anticipated that TSA will want to comment on the regulations when they are published.

4. Supreme Court Update.

Four important cases are currently pending or have been recently decided. Their outcome may have significant effect upon public school relationships with religion, private school choice and school boards.

- In *Kennedy v. Bremerton School District*, the Court heard oral arguments on the issue of a football coach publicly praying on the field. The coach was fired. The case is a first amendment quagmire of freedom of speech and freedom of religion. A decision has not been issued.
- In *Carson v. Makin*, the Court heard arguments regarding Maine’s exclusion of private religious schools from its program of paying private school tuition for students in communities without high schools. It is a follow-up to the 5-4 decision of *Espinoza v. Montana Department of Revenue*, which held that a Montana state constitutional provision barring aid to religious schools unfairly discriminated against those schools. A decision has not been issued yet.
- The Court has issued a decision in *Cummings v. Premier Rehab. Keller PLLC*. The Court held that a party suing under federal civil rights laws such as the Civil Rights Act of 1964, Title IX, or the Rehabilitation Act of 1973 may not seek compensatory damages for emotional distress.
- The Court also decided *Houston Community College System v. Wilson* and overwhelmingly decided that a public censure of a college trustee did not violate his First Amendment rights.

These cases are both significant in their own right but also their effect upon future legislation. Just as Congress is now taking up abortion-related issues in response to the leaked opinion regarding the State of Mississippi’s laws related to such, Congress may very likely take up legislative efforts dealing with the topics of these Supreme Court cases.



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As more information is obtained, we will share with TSA.

Very truly yours,

Thompson & Horton LLP

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