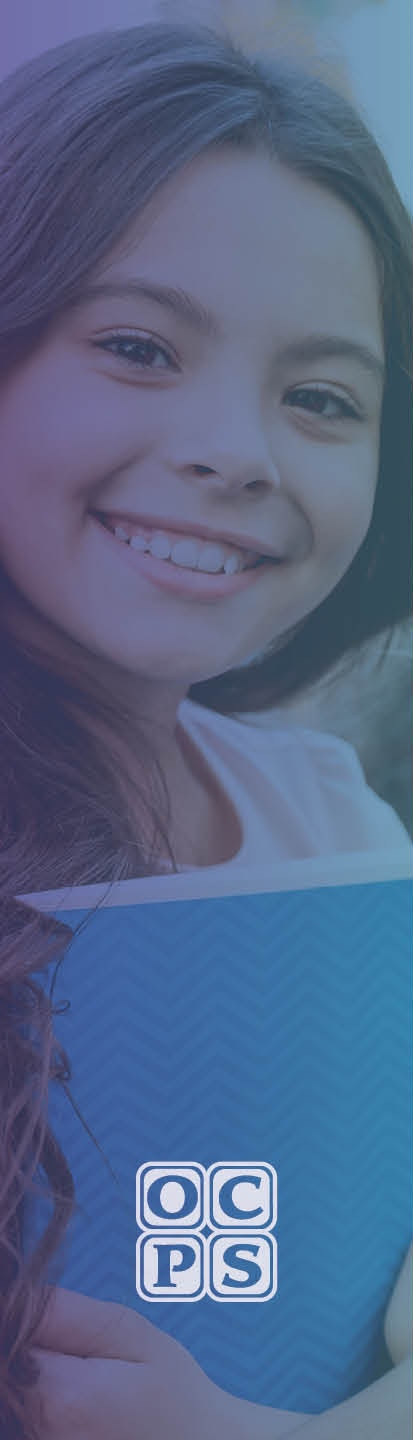
45th FIAAA State Conference

May 8, 2023

Orange County Public Schools

House Bill 225

Newly Created Association on the Horizon

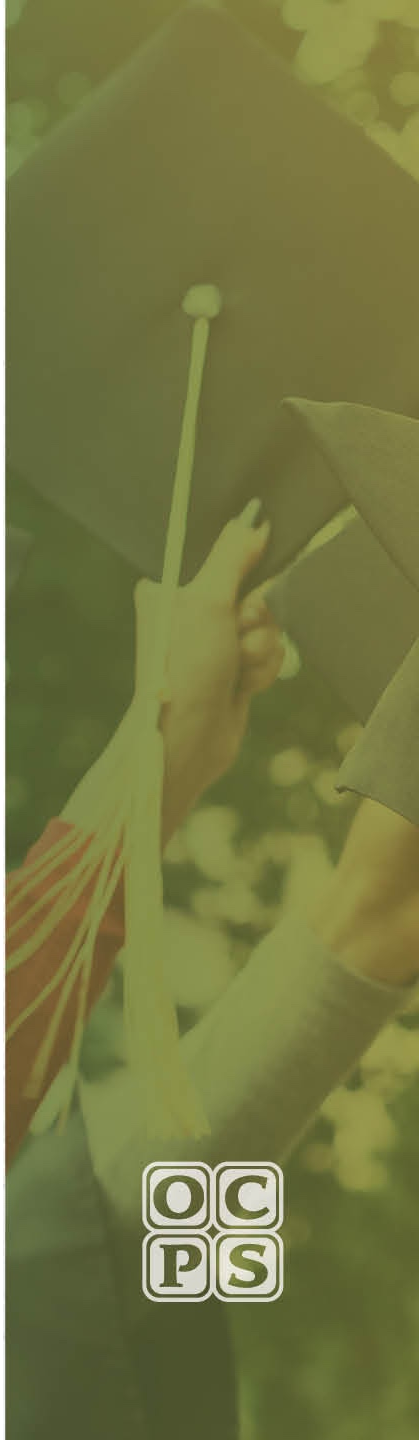


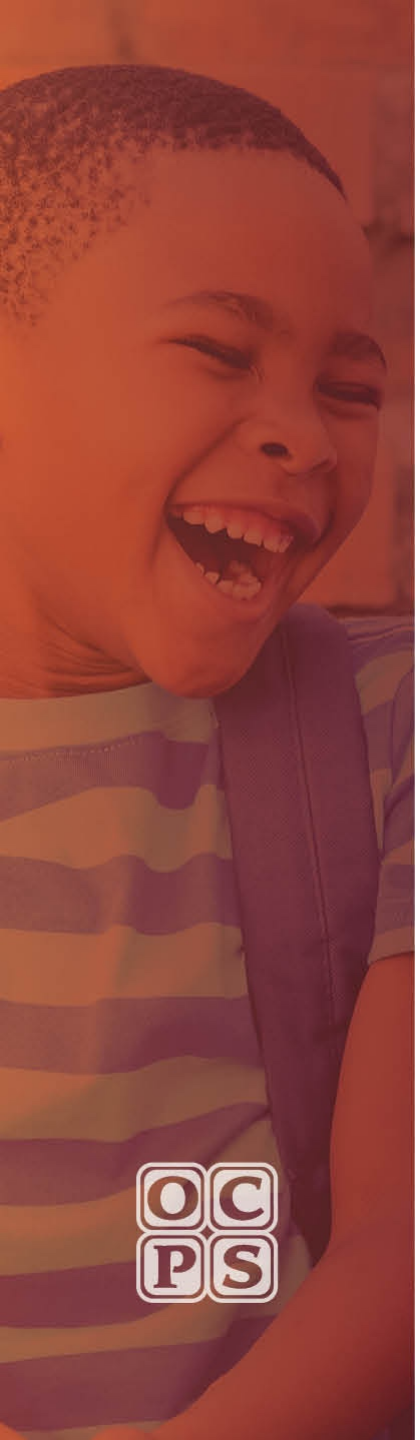
House Bill 225

- Change to 1006.20, Fla. Stat. authorizes athletic associations to be approved by the State Board of Education other than FHSAA:
  - “The State Board of Education may approve other nonprofit athletic associations. As used in this section, the term ‘approved athletic association’ means the FHSAA and other nonprofit athletic associations approved by the State Board of Education. Each nonprofit athletic association subject to the requirements of this section shall operate under a contract with the State Board of Education. Before entering into a contract with an association, the State Board of Education shall annually review, at a minimum, the bylaws, policies, and dues and fees of the association for compliance with subpart D of this part.”

House Bill 225

- “Any high school in the state, including private schools, traditional public schools, charter schools, virtual schools, and home education cooperatives, may become a member of any approved athletic association. However, a public school may not maintain membership in or pay dues or fees to any athletic association that is not operated under a contract with the State Board of Education.”
- Any approved athletic association must afford the same benefits to schools joining by sport as schools that maintain full membership in the association. Approved athletic associations may not deny or discourage interscholastic competition between its member schools and nonmember Florida schools, including members of another approved athletic association, and may not take any retributory or discriminatory action against any of its member schools that participate in interscholastic competition with nonmember Florida schools.”



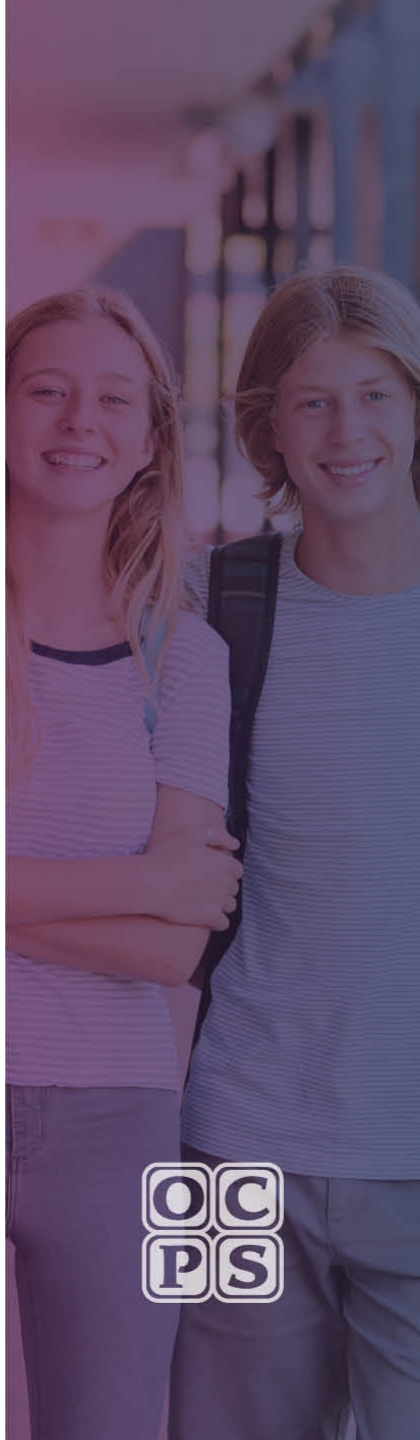


House Bill 225

- The Sunshine State Athletic Conference was one conference that covers primarily religious private schools and charter schools. The Legislature, in the Staff Analysis of the Bill, states this new legislation is designed to allow schools to retain membership for certain sports in the existing Conference and to join FHSAA in other sports:
  - “For example, prior to 2020, the Sunshine State Athletic Commission (SSAC) was the primary association sanctioning women’s sand volleyball and running an official league. In June 2020, the FHSAA Board of Directors voted to recognize sand volleyball as a spring sport beginning in the 2021-2022 school year. This presents potential conflicts for schools formerly participating in the SSAC sand volleyball league and their simultaneous memberships in the FHSAA as it relates to eligibility to continue playing in alternative leagues and retaining FHSAA championship eligibility in other sports.”

House Bill 225

- Each approved association has to adopt bylaws.
- The adopted bylaws have to prohibit recruiting
- The penalties are the same:
  - First offense: forfeiture of $5,000 in pay for employee or contractor who committed violation
  - Second offense: Suspension for 12 months and forfeiture of $5,000 in pay for employee or contractor who committed violation
  - Third offense: Forfeiture of $5,000 in pay and possible revocation of teaching certificate for three years if found guilty after an administrative hearing.



House Bill 225

- All associations will be required to have students complete a physical prior to participation
- Students may opt out of physical if it conflicts with sincerely held religious beliefs. We require our students who do that to sign a waiver absolving us of all claims arising out of participation in sports.
- All association investigators will have to undergo a Level 2 background screening.

House Bill 225

- All associations will have to adopt bylaws for major infractions including:
  - Allowing ineligible students to play
  - Violation of recruiting rules
  - Violation of sportsmanship rules
- Coaches may be suspended for major violations. If the Coach commits a violation and is fined, the Coach has to reimburse the school prior to being allowed to coach.

House Bill 225

- All associations must establish procedures for eligibility
  - The standard is preponderance of evidence
  - Parents and students must be able to present evidence to investigator
  - Investigator presents evidence to executive director or board of directors for an unbiased and objective determination of eligibility
  - Determination of eligibility must be made in writing with findings of fact and specific violations
  - The associations may adopt the rules of s. 120.569 and s. 120.57, Fla. Stat. for hearings on eligibility with “unbiased and qualified hearing officers.”

House Bill 225

- All associations have to adopt guidelines for education and treatment on concussions and head injuries.
- Parents have to sign and return an informed consent about head injuries prior to their child being allowed to participate.
- All associations either have to comply with FHSAA's sports medicine advisory committee or adopt their own.

House Bill 225

- FHSAA Board will now be appointed as follows and will exercise executive and legislative powers. Eight of the nine members will be appointed by the Governor and confirmed by the Senate:
  - 2 public school representatives from administrative regions
  - 2 nonpublic school representatives from administrative regions other than those of the public school representatives
  - 2 representatives, one from the two northernmost administrative regions and one from the two southernmost administrative regions
  - One superintendent from the northernmost administrative regions
  - One school board member from southernmost administrative regions
  - The Commissioner of Education or his/her designee

House Bill 225

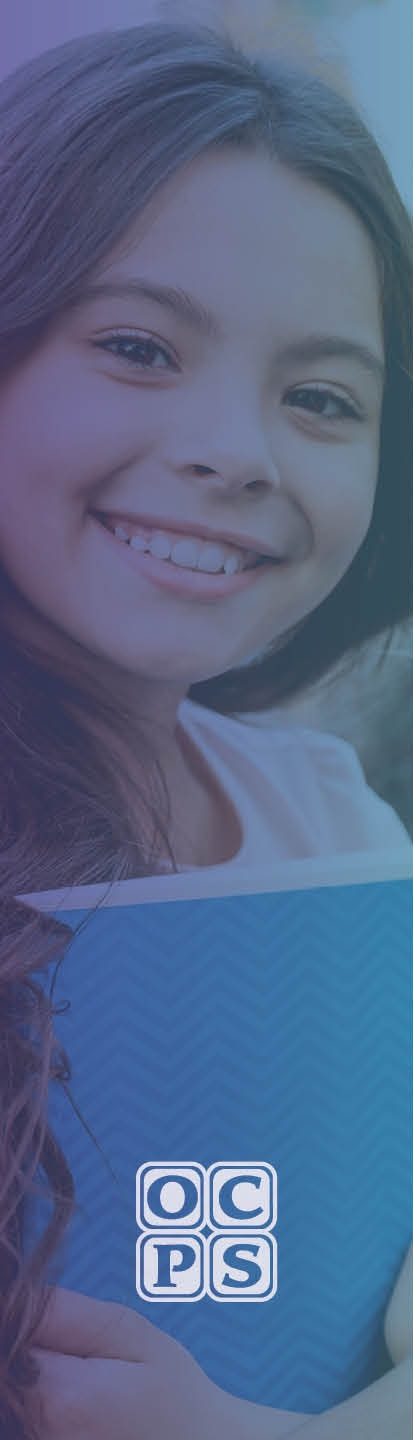
- The FHSAA Executive Director must be approved by the State Board of Education.
- The FHSAA's budget must be approved by the State Board of Education.
- The FHSAA Board may "approve, reject, or amend any legislative recommendations from the representative assembly. Approval of a recommendation from the representative assembly requires a majority vote of the board of directors."

House Bill 225

- The FHSAA Representative Assembly “may provide legislative recommendations to the board of directors” for adoption, revision or repeal of FHSAA Bylaws.
- The composition of the Representative Assembly is as follows:
  - An equal number of school representatives from each of the four administrative regions.
  - Four superintendents, one from each administrative region
  - Four school board members, one from each administrative region
  - The Commission of Education or his/her designee.

House Bill 225

- The Commissioner of Education “may, at any time, direct the board of directors to amend the FHSAA's bylaws.”
- The State Board of Education “must approve any amendment to the FHSAA's bylaws. A bylaw adopted by the board of directors may not take effect until the state board approves such bylaw.”

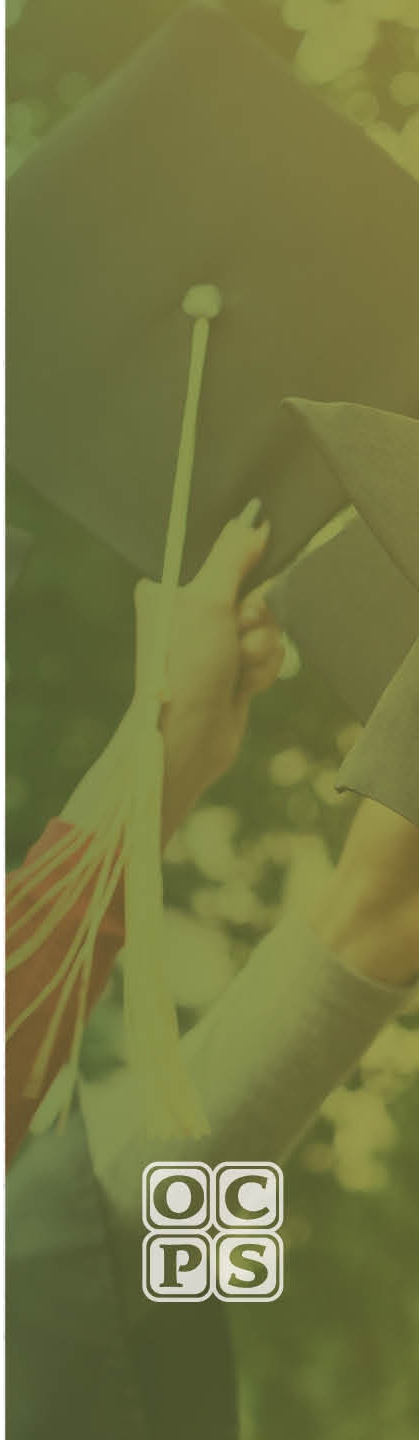


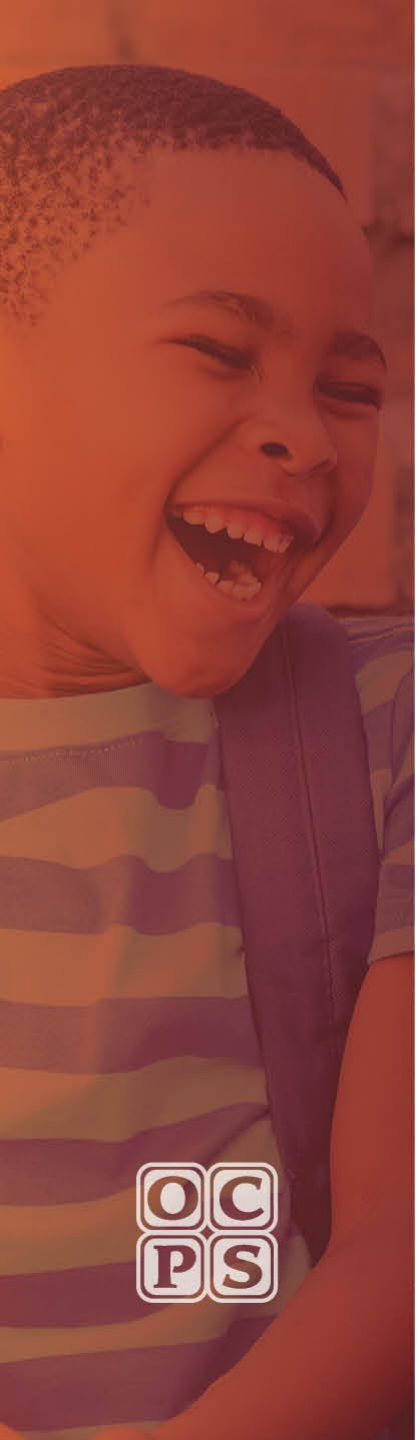
House Bill 225

- “An individual home education student is eligible to participate at **any** public school in the school district in which the student resides or which the student could choose to attend pursuant to s. 1002.31, or may develop an agreement to participate at a private school, in the interscholastic extracurricular activities of that school…”
- All other eligibility requirements remain except this new provision was added:
  - “The roster for the specific interscholastic activity in which the home education student would like to participate has not reached the activity's identified maximum size and the coach or sponsor for the activity determines that the home education student has the requisite skill and ability to participate.”

House Bill 225

- “An individual charter school student pursuant to s. 1002.33 is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could attend, or **may develop an agreement to participate at a private school**, in any interscholastic extracurricular activity of that school, unless such activity is provided by the student's charter school…”
- All other eligibility requirements remain the same.



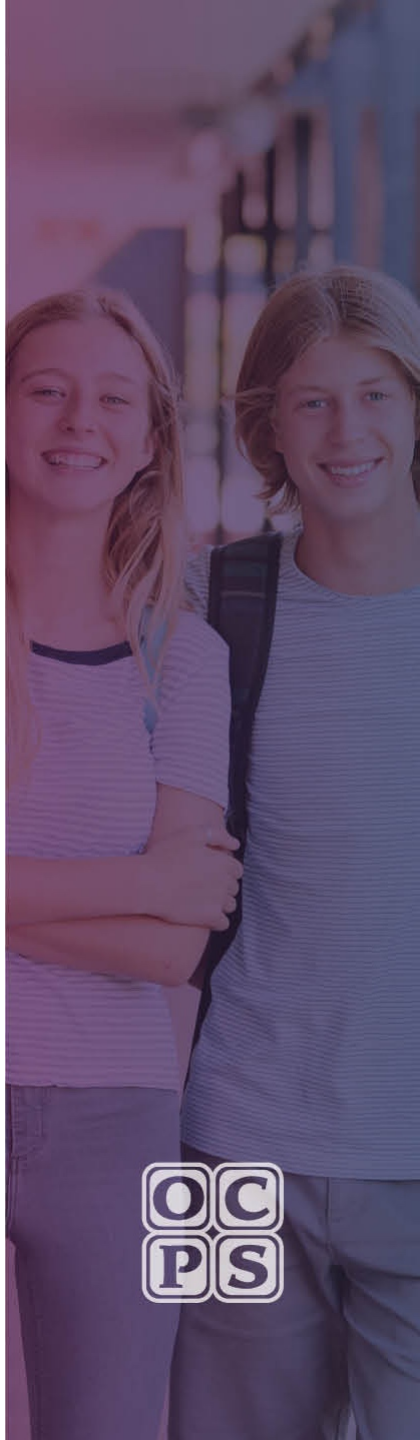


House Bill 225

- “A student of the Florida Virtual School full-time program may participate in any interscholastic extracurricular activity at **any** public school in the school district in which the student resides or which the student could choose to attend pursuant to s. 1002.31, **or may develop an agreement to participate at a private school**…”
- All other eligibility requirements remain except the following was added:
  - “The roster for the specific interscholastic activity in which the student would like to participate has not reached the activity's identified maximum size and the coach or sponsor for the activity determines that the student has the requisite skill and ability to participate.”

House Bill 225

- In new associations, they must facilitate private school student participation at public schools or private schools for students attending private schools who are not part of the new association.
- Parent have to provide transportation for their students to participate. Member schools of the new associations are exempt from civil liability for injuries occurring during transportation.



House Bill 225

- “A student who is participating in an interscholastic or intrascholastic activity at a public school and who transfers from the school during the school year must be permitted to continue to participate in the activity at the school from which he or she transferred for the remainder of the school year if:
  - (a) During the period of participation in the activity, the student continues to meet the requirements in paragraph (3)(a).
  - (b) The student continues to meet the same standards of acceptance, behavior, and performance that are required of other students participating in the activity, except for enrollment requirements at the school at which the student participates.
  - (c) The parents of the student participating in the activity provide for the transportation of the student to and from the school at which the student participates. The school the student attends, the school at which the student participates in the activity, and the district school board are exempt from civil liability arising from any injury that occurs to the student during such transportation.”

House Bill 225

- “Each approved athletic association under s. 1006.20 whose membership includes public schools shall adopt bylaws, policies, or procedures that provide each school participating in a high school championship contest, or series of contests, under the direction and supervision of the association, the opportunity to make brief opening remarks, if requested by the school, using the public address system at the event. Such remarks may not be longer than 2 minutes per school. The athletic association may not control, monitor, or review the content of the opening remarks and may not control the school's choice of speaker. Before the opening remarks, an announcement must be made that the content of any opening remarks by a participating school are not endorsed by and do not reflect the views and opinions of the athletic association. The decision to allow opening remarks before regular season contests is at the discretion of each school.”

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- This provision was meant to change the result in Cambridge Christian School, Inc. v. Florida High School Athletic Association. In that case, FHSAA denied the ability of those schools to use the Public Address system to have a prayer prior to the State Championship game. The game took place at the publically owned Florida Citrus Bowl in Orlando.
- The Court initially dismissed the free speech and free exercise claims under the First Amendment. The 11th Circuit ruled that the private school stated a claim. See Cambridge Christian School, Inc. v. Florida High School Athletic Association, 942 F.3d 1215 (11th Cir. 2019)

House Bill 225

- On remand to the District Court, the District Court again ruled in favor of FHSAA, stating that the FHSAA did not violate the private school's right to free speech of free exercise:
  - "The issue before the Court is whether the First Amendment required the FHSAA to grant the teams unrestricted access to the PA system to deliver the prayer over the loudspeaker during the pregame. Thus, the questions to be answered are whether the inability to pray over the loudspeaker during the pregame of the State Championship Final football game violated CCS's First Amendment rights to freedom of speech and free exercise of religion. The Free Speech Clause of the First Amendment to the United States Constitution prohibits Congress from making any law 'abridging the freedom of speech.' The First Amendment also contains the Free Exercise Clause, which prohibits Congress from making any 'law prohibiting the free exercise' of religion. As discussed below, the Court concludes that the First Amendment does not apply because the speech at issue is government speech, but even if some portion of the speech is considered private speech, the Court finds no constitutional violation occurred." Cambridge Christian Sch., Inc. v. Florida High Sch. Athletic Ass'n, Inc., 8:16-CV-2753-CEH-AAS, 2022 WL 971778, at *4 (M.D. Fla. Mar. 31, 2022)

House Bill 225

- The Supreme Court addressed a School Board policy allowing student-initiated, student-led prayer over the loudspeaker at football games.
- The court held in Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 309–10 (2000) that such practice violated the Establishment clause:
  - "School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.' The delivery of such a message—over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer—is not properly characterized as 'private' speech.

House Bill 225

- The court further held as follows:
  - “To assert that high school students do not feel immense social pressure, or have a truly genuine desire, to be involved in the extracurricular event that is American high school football is ‘formalistic in the extreme.’ *Ibid.* We stressed in *Lee* the obvious observation that ‘adolescents are often susceptible to pressure from their peers towards conformity, and that the influence is strongest in matters of social convention.’ High school home football games are traditional gatherings of a school community; they bring together students and faculty as well as friends and family from years present and past to root for a common cause. Undoubtedly, the games are not important to some students, and they voluntarily choose not to attend. For many others, however, the choice between attending these games and avoiding personally offensive religious rituals is in no practical sense an easy one. The Constitution, moreover, demands that the school may not force this difficult choice upon these students for ‘[i]t is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.’” Id. at 311-12.

House Bill 225

- Charter School and Florida Virtual School students may now “or may develop an agreement to participate [in extracurricular activities] at a private school.”
- All associations “shall adopt statewide uniform safety standards for student cheerleaders and spirit groups that participate in any school activity or extracurricular student activity, if applicable. Such approved athletic association shall adopt the ‘Official High School Spirit Rules,’ published by the National Federation of State High School Associations, as the statewide uniform safety standards.”

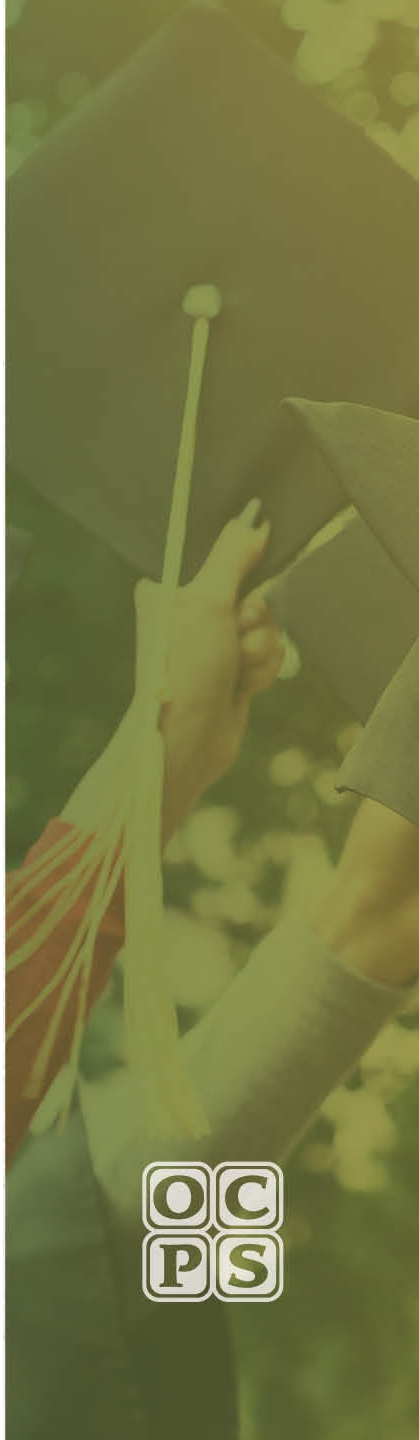
House Bill 225

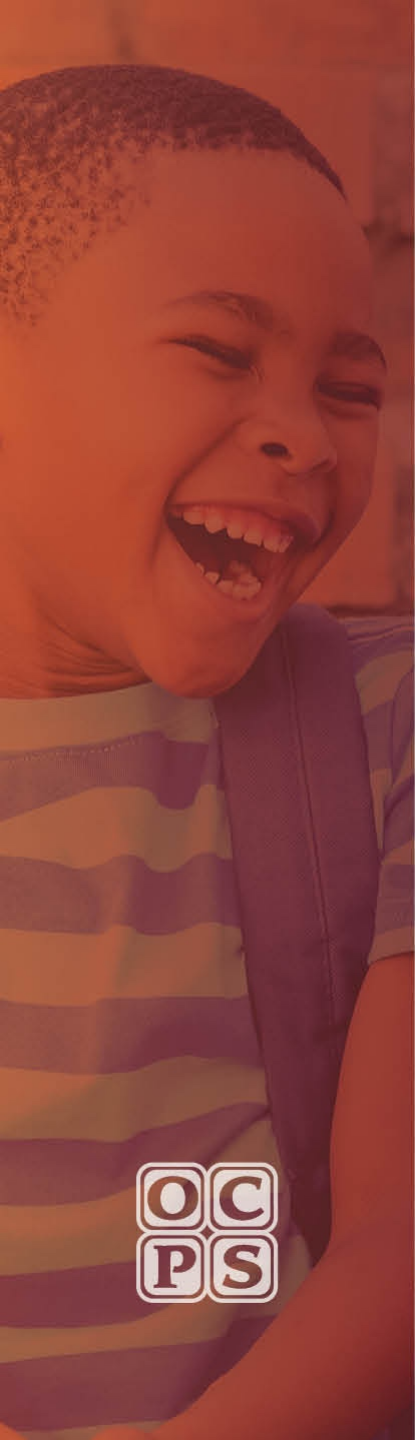
- School Boards exempt from fingerprinting requirements all association investigators who have been Level 2 background screened by their association and have been provided badging to establish such screening.
- The law is effective July 1, 2023.

Kennedy v. Bremerton School District

Kennedy v. Bremerton School District

- This case was before the Supreme Court for Oral Argument on April 25, 2022.
- Oral Argument has some interesting exchanges:
  - “JUSTICE KAGAN: I -- **I take it from your earlier answers that you're not contesting the right of the school district to discipline Coach Kennedy if he had been praying during the official, if you will, post-game talk**?
  - MR. CLEMENT: **I think that's right**. We don't -- I mean -- JUSTICE KAGAN: Correct?
  - MR. CLEMENT: -- we don't take an issue that –
  - JUSTICE KAGAN: So -- so that's like –
  - MR. CLEMENT: -- he discontinued that practice.” (Transcript of Oral Argument, page 25)



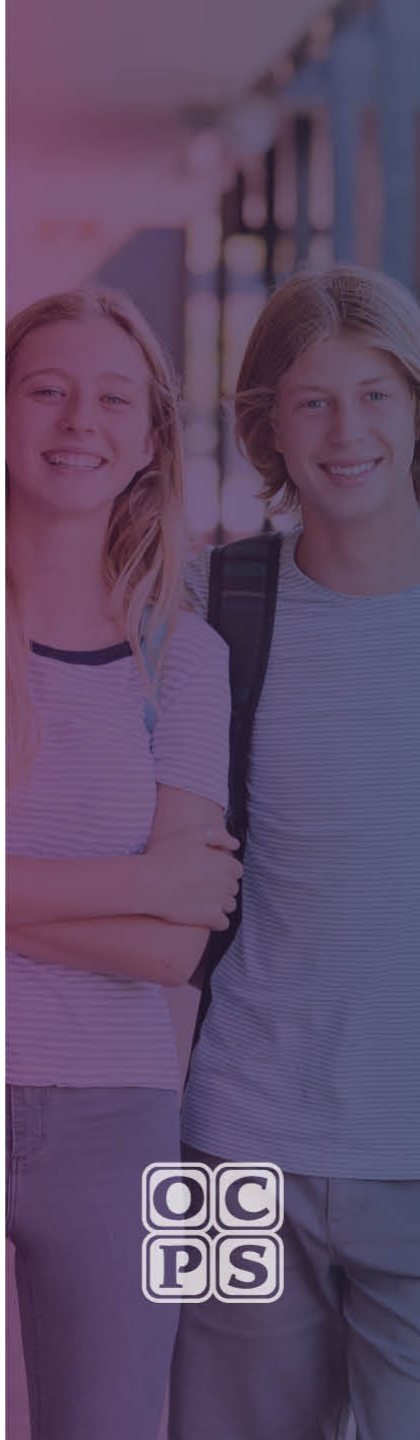


Kennedy v. Bremerton School District

- JUSTICE KAGAN: -- if he were praying -- if he were a math teacher and he prayed in math class, same? If he's a coach and he prays during the post-game talk, that the school can discipline him for?
- MR. CLEMENT: That's right because –
- JUSTICE KAGAN: And -- and –
- MR. CLEMENT: -- it would be government speech.
- JUSTICE KAGAN: -- just briefly, why?
- MR. CLEMENT: Because it would be government speech." (Transcript of Oral Argument, page 26)

Kennedy v. Bremerton School District

- JUSTICE KAVANAUGH: What about the player who thinks, if I don't participate in this, I won't start next week, or the player who thinks, if I do participate in this, I will start next week, and the player, like, wants start?
- MR. CLEMENT: So that's -- that's where I think making a clear message that that's inappropriate, that this doesn't matter for those purposes, that's -- that's how you deal with those problems. And if there is a coach or a teacher –
- JUSTICE KAVANAUGH: But how -- how will you -- how will you ferret that out? Because every player's trying to get on the good side of the coach, and every parent is worried about the coach exercising favoritism in terms of the starting lineup, playing time, recommendations for colleges, et cetera.
- MR. CLEMENT: I -- I -- I think the school district, if it has that concern, and I'm not saying it's not a legitimate concern, just makes it as clear that it's school policy that nothing turns on that. But that concern, although legitimate, isn't even specific to religion. I mean, if -- if – (Transcript of Oral Argument, Pages 47-48)



Kennedy v. Bremerton School District

- The Court issued its decision on June 27, 2022.
- Justice Gorsuch phrased the question presented in the case as follows:
  - “Joseph Kennedy lost his job as a high school football coach because he knelt at midfield after games to offer a quiet prayer of thanks. Mr. Kennedy prayed during a period when school employees were free to speak with a friend, call for a reservation at a restaurant, check email, or attend to other personal matters. He offered his prayers quietly while his students were otherwise occupied. Still, the Bremerton School District disciplined him anyway. It did so because it thought anything less could lead a reasonable observer to conclude (mistakenly) that it endorsed Mr. Kennedy's religious beliefs. That reasoning was misguided.” Kennedy v. Bremerton Sch. Dist., 142 S.Ct. 2407 (2022).

Kennedy v. Bremerton School District

- Part of the record from the case also included this evidence:
  - “Subsequently, the District superintendent explained in an October 20 email to the leader of a state association of school administrators that ‘the coach moved on from leading prayer with kids, to taking a silent prayer at the 50 yard line.’ *Id.*, at 83. The official with whom the superintendent corresponded acknowledged that the ‘use of a silent prayer changes the equation a bit.’ *Ibid*. On October 21, the superintendent further observed to a state official that ‘[t]he issue is quickly changing as it has shifted from leading prayer with student athletes, to a coaches [*sic*] right to conduct’ his own prayer ‘on the 50 yard line.’”

Kennedy v. Bremerton School District

- The Court then found “After the October 23 game ended, Mr. Kennedy knelt at the 50-yard line where ‘no one joined him,’ and bowed his head for a ‘brief, quiet prayer.’ The Superintendent informed the District’s Board that this prayer ‘moved closer to what we want,’ but nevertheless remained unconstitutional. After the final relevant football game on October 26, Mr. Kennedy again knelt alone to offer a brief prayer as the players engaged in postgame traditions. While he was praying, other adults gathered around him on the field. Later, Mr. Kennedy rejoined his players for a postgame talk, after they had finished singing the school fight song.”

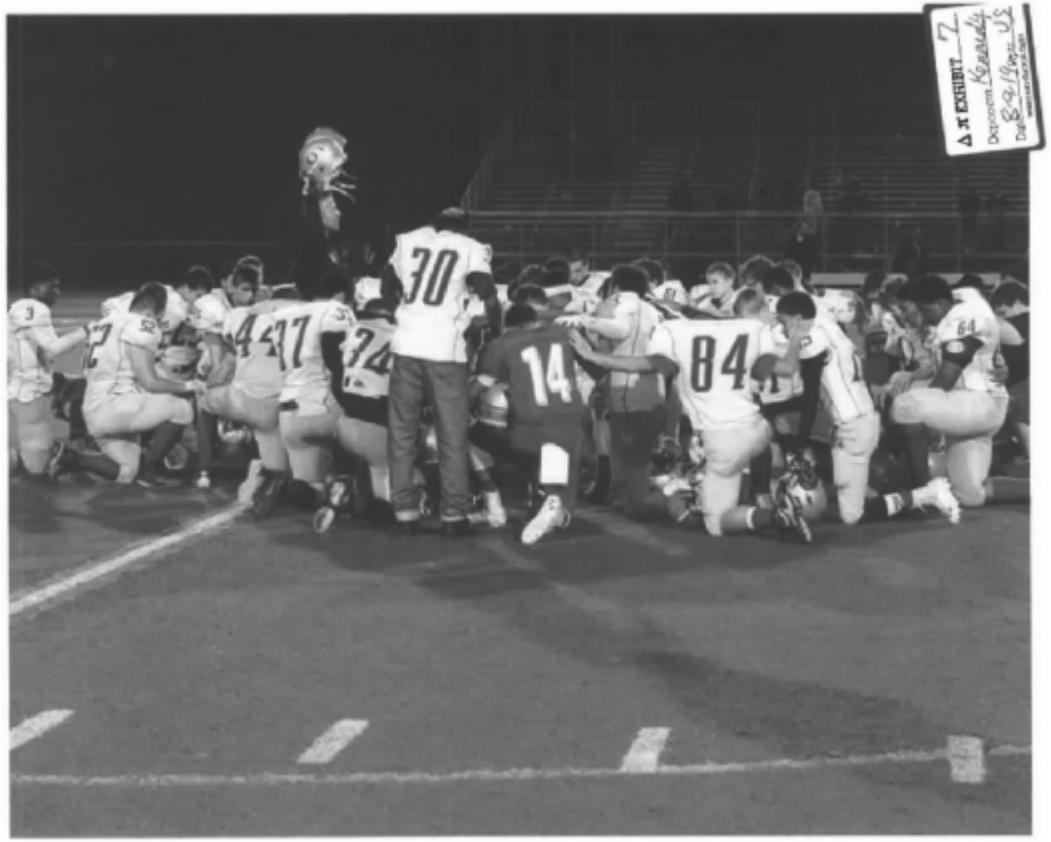
Kennedy v. Bremerton School District

- The School District issued a question and answer document to the public on October 28. The document stated:
  - No student had been directly coerced to pray with Kennedy.
  - Kennedy had complied with the District's instruction to refrain from his 'prior practice of leading players in pre-game prayer in the locker room or leading players in a post-game prayer immediately following games.

Kennedy v. Bremerton School District

- The dissent authored by Justice Sotomayor took issue with this characterization:
  - “As the majority tells it, Kennedy, a coach for the District's football program, ‘lost his job’ for ‘pray[ing] quietly while his students were otherwise occupied.’ The record before us, however, tells a different story.”
  - “[The School District] learned that, since his hiring in 2008, Kennedy had been kneeling on the 50-yard line to pray immediately after shaking hands with the opposing team. Kennedy recounted that he initially prayed alone and that he never asked any student to join him. Over time, however, a majority of the team came to join him, with the numbers varying from game to game. Kennedy's practice evolved into postgame talks in which Kennedy would hold aloft student helmets and deliver speeches with ‘overtly religious references’ which Kennedy described as prayers, while the players kneeled around him. The District also learned that students had prayed in the past in the locker room prior to games, before Kennedy was hired, but that Kennedy subsequently began leading those prayers too.”

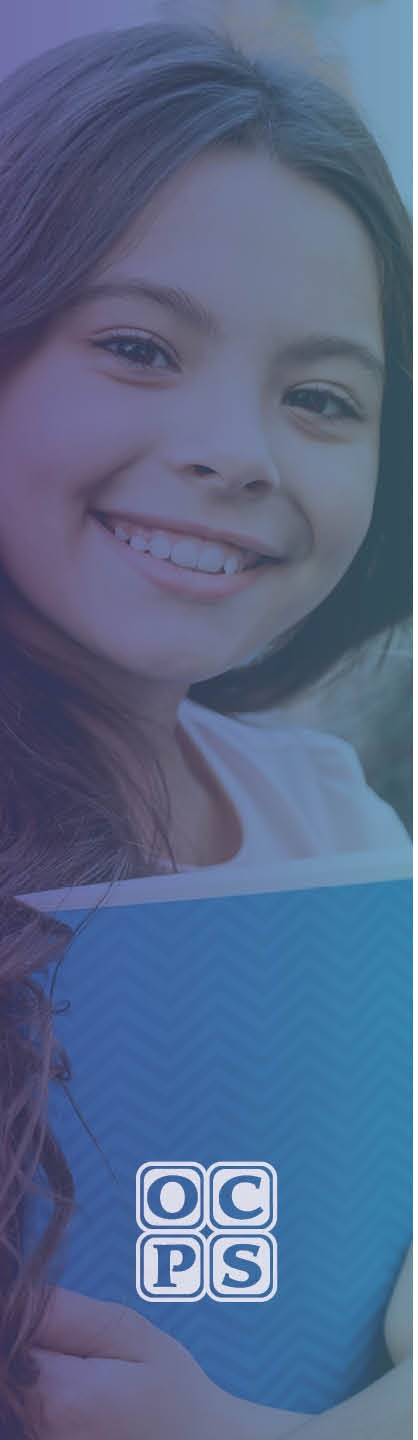
Kennedy v. Bremerton School District



Photograph of J. Kennedy standing in group of kneeling players.

Kennedy v. Bremerton School District

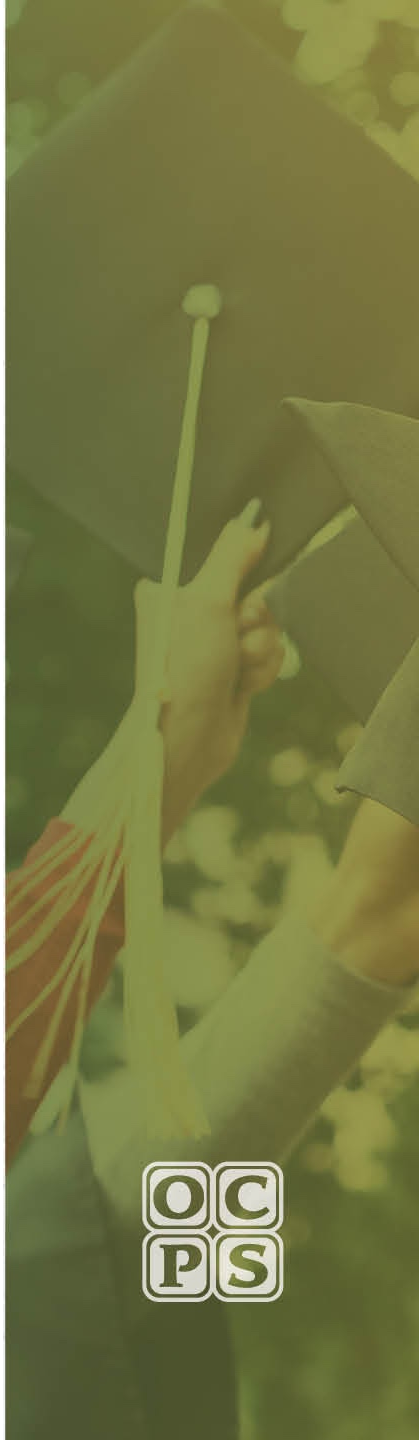
- The previous picture was taken at the September 11, 2015 game.
- Kennedy only stopped conducting prayer with his students a month after this game.
- So from 2008 until October 2015, Kennedy had prayed with his players.
- As an example, an October 14, 2015 letter from Kennedy to the school district stated he had not invited anyone to pray with him. The District said that might be true for the September 17, 2015 game, but that “Kennedy had acknowledged inviting others to join him on many different occasions.”

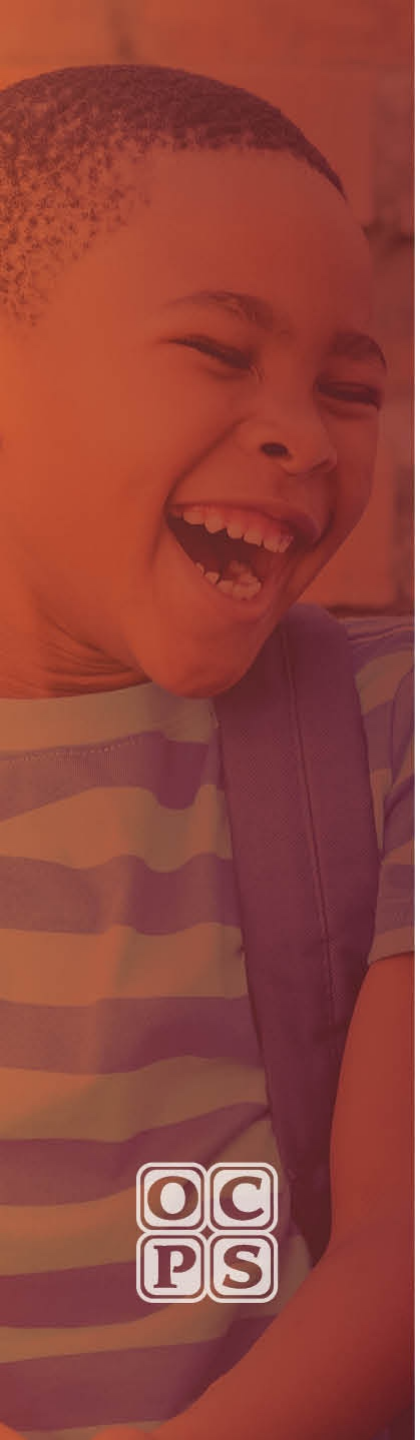


Kennedy v. Bremerton School District

Kennedy v. Bremerton School District

- The previous picture was taken at the October 16, 2015 game.
- The District sent a letter on October 23, 2015 stating this prayer "drew him away from his work" as Kennedy had "until recently, … regularly come to the locker room with the team and other coaches following the game" and had "specific responsibility for the supervision of players in locker room following games."



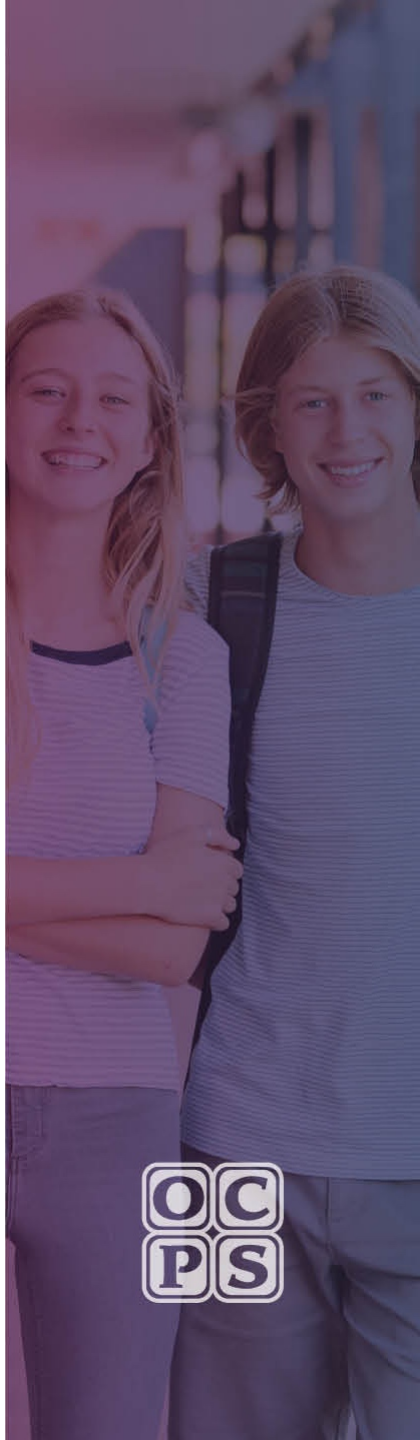


Kennedy v. Bremerton School District

- On October 23, 2015, after the game, Kennedy kneeled to pray on the 50-yard line “with players standing nearby.”
- At the October 26, 2025 game, Kennedy prayed “surrounded by members of the public, including state representatives who attended the game to support Kennedy.” The BHS players, after singing the fight song, joined Kennedy at midfield after he stood up from praying.

Kennedy v. Bremerton School District

Photograph of J. Kennedy in prayer circle (Oct. 26, 2015).



Kennedy v. Bremerton School District

- On October 28, 2015, the District notified Kennedy he was being placed on paid administrative leave for violating its directive at the October 16, October 23 and October 26 games by kneeling on the field and praying.
- Kennedy was not rehired for the following year because “he failed to follow district policy,” “demonstrated a lack of cooperation with administration,” “contributed to negative relations between parents, students, community members, coaches and the school district,” and “failed to supervise student-athletes after games due to his interactions with media and the community.”
- The head coach of the team resigned after 11 years as head coach, as well as three assistants. The head coach feared he or his staff would be shot by the crowd or attacked because of the turmoil created by Kennedy’s media appearance.

Kennedy v. Bremerton School District

- The Court ruled that the District burdened Kennedy's First Amendment right to free exercise of religion:
  - "Under this Court's precedents, a plaintiff may carry the burden of proving a free exercise violation in various ways, including by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.' Should a plaintiff make a showing like that, this Court will find a First Amendment violation unless the government can satisfy 'strict scrutiny' by demonstrating its course was justified by a compelling state interest and was not narrowly tailored in pursuant of that interest. Id. at 2421-22.

Kennedy v. Bremerton School District

- The Court said Kennedy was burdened in his sincere religious practice because the District would not allow him to pray at the 50-yard line even though he is willing to “wait until the game is over and the players have left the field’ to ‘walk to mid-field and say [his] short, private, personal prayer. The contested exercise before us does not involve leading prayers with the team or before any captive audiences. Mr. Kennedy’s ‘religious beliefs do not require him to lead any prayer … involving students.”

Kennedy v. Bremerton School District

- The Court also ruled that the School District's actions were not neutral or generally applicable because "By its own admission, the District sought to restrict Mr. Kennedy's actions at least in part because of their religious character.
- The Court ruled in part the rule was not neutral because "the District permitted other members of the coaching staff to forgo supervising students briefly after the game to do things like visit with friends or take personal phone calls. Thus any sort of postgame supervisory requirement was not applied in an evenhanded, across the board way."

Kennedy v. Bremerton School District

- The Court also ruled that Kennedy's right to free speech was violated because his speech was "private" and not government speech.
- He was not engaged in speech "ordinarily within the scope of his duties" as a coach. Id. at 2424.
- The Court held he was not "instructing players, discussing strategy, encouraging better on field performance, or engaged in any other speech the District paid him to produce as a coach." Id.
- The Court also said the timing of the prayer confirms he was not acting in his duties as coach as "coaches were free to attend briefly to personal matters – everything from checking sports scores on their phones to greeting friends and family in the stand." Id. at 2425.

Kennedy v. Bremerton School District

- The District defended itself by stating the practice of the Coach praying in his school colors right after the game on the fifty yard line could be seen as an unconstitutional endorsement of religion in violation of Lemon.
- “What the District and the Ninth Circuit overlooked, however, is that the shortcomings’ associated with this ‘ambitious,’ abstract and ahistorical approach to the Establishment Clause became so ‘apparent’ that this Court long ago abandoned Lemon and its endorsement test.”
- In fact, Lemon had not been formally overruled until the Kennedy case.

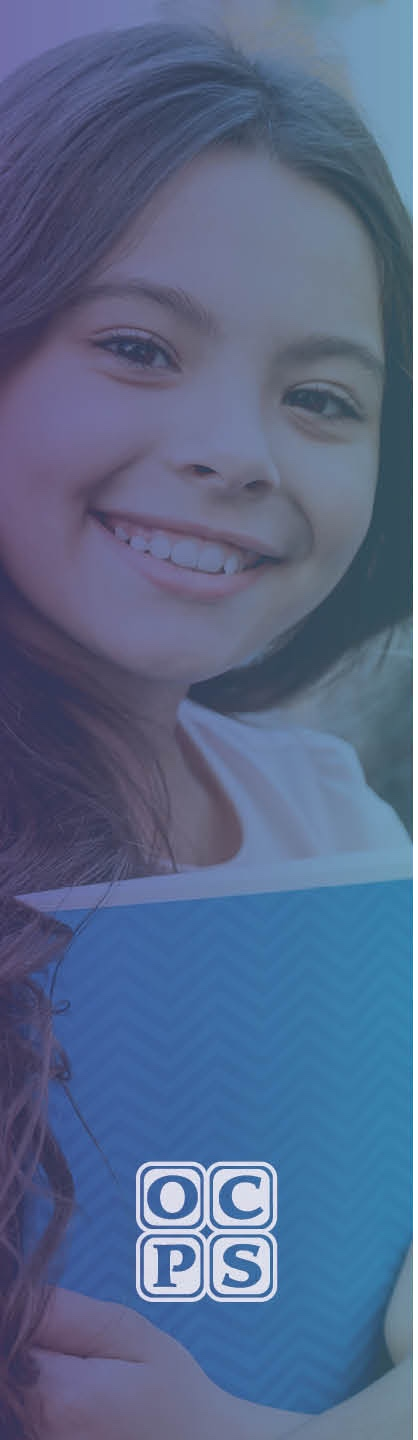
Kennedy v. Bremerton School District

- The District also argued that the prayer was coercive to students. The Court did state: “the district submits that, after Mr. Kennedy’s suspension, a few parents told District employees that their sons had ‘participated in the team prayers only because they did not wish to separate themselves from the team.” Id. at 2430.
- The Court also cited as evidence of a lack of coercion that “Students were not required to participate. And in fact, none of Mr. Kennedy’s students did participate in any of the three October 2015 prayers that resulted in Mr. Kennedy’s discipline.” Id. At 2432.

Kennedy v. Bremerton School District

- The key in this case seemed to be that Kennedy had stopped praying with students and that Kennedy prayed when coaches were taking brief moments to themselves to do non-work related activities.
- If a school district wants to prohibit such activities, it can enact policies or procedures which require all coaches before and after games while students are present to refrain from any personal matters and to solely supervise students (i.e. no personal phone calls, no visiting with friends, no checking sports scores, etc.)

U.S. DOE Guidance



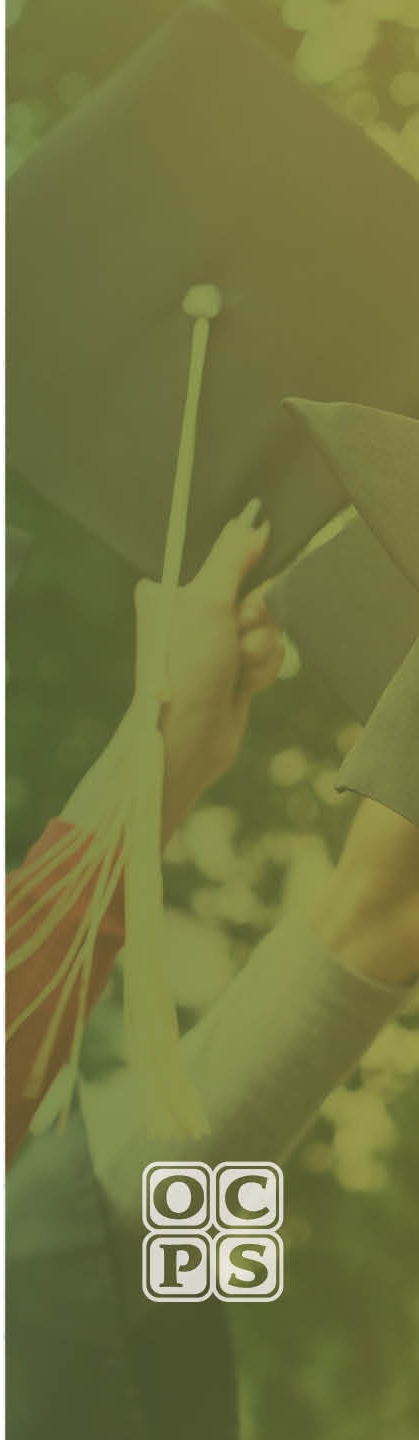
U.S. DOE Guidance

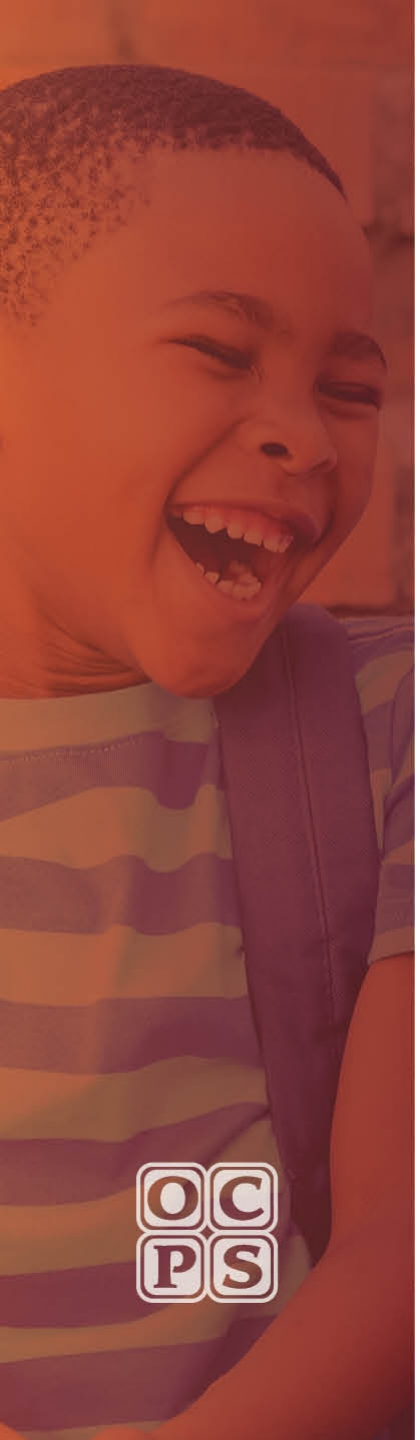
- The United States Department of Education issued its *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*.
- The link is here:

  https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html#:~:text=When%20acting%20in%20their%20official,in%20such%20activity%20with%20students.

U.S. DOE Guidance

- “The Supreme Court's decisions set forth principles that distinguish impermissible governmental religious speech from constitutionally protected private religious speech. For example, teachers and other public school officials, acting in their official capacities, may not lead their classes in prayer, devotional readings from the Bible, or other religious activities, nor may school officials use their authority to attempt to persuade or compel students to participate in prayer or other religious activities.”





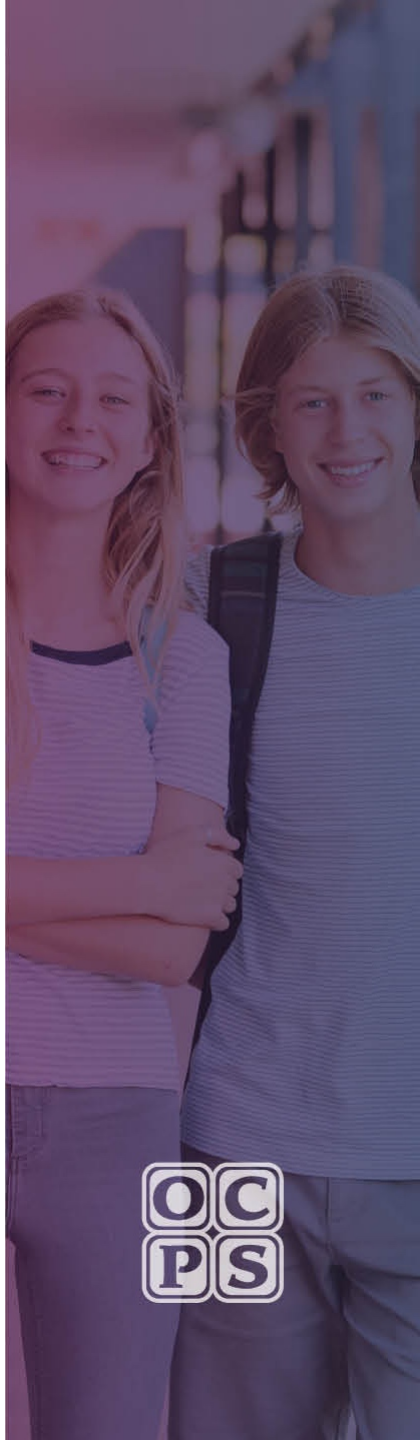
U.S. DOE Guidance

- When acting in their official capacities as representatives of the State, teachers, school administrators, and other school employees are prohibited by the First Amendment from encouraging or discouraging prayer, and from actively participating in such activity with students.
- Teachers, however, may take part in religious activities where the overall context makes clear that they are not participating in their official capacities. Teachers also may take part in religious activities such as prayer even during their workday at a time when it is permissible to engage in other private conduct such as making a personal telephone call. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies or similar events.

Transgender Student Update

Transgender Student Update

- In 2021, the Legislature created s. 1006.205, the “Fairness in Women’s Sports Act.”
- The law states as follows:
  - Athletic teams or sports designated for males, men, or boys may not be open to students of the female sex.
  - Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex.
  - For purposes of this section, a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student’s sex.
  - Biological sex at birth if the statement was filed at or near the time of the student's birth.



Transgender Student Update

- Bill creates a cause of action:
  - “Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this section shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school or public postsecondary institution.”
  - Any student who is subject to retaliation or other adverse action by a school, public postsecondary institution, or athletic association or organization as a result of reporting a violation of this section to an employee or representative of the school, institution, or athletic association or organization, or to any state or federal agency with oversight of schools or public postsecondary institutions in the state, shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school, institution, or athletic association or organization.”

Transgender Student Update

- Title IX considerations:

  “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Transgender Student Update

- On April 6, 2023, the United States Department of Education released new Title IX regulations which state as follows:
  - Section 106.41(b)(2): “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.”

Transgender Student Update

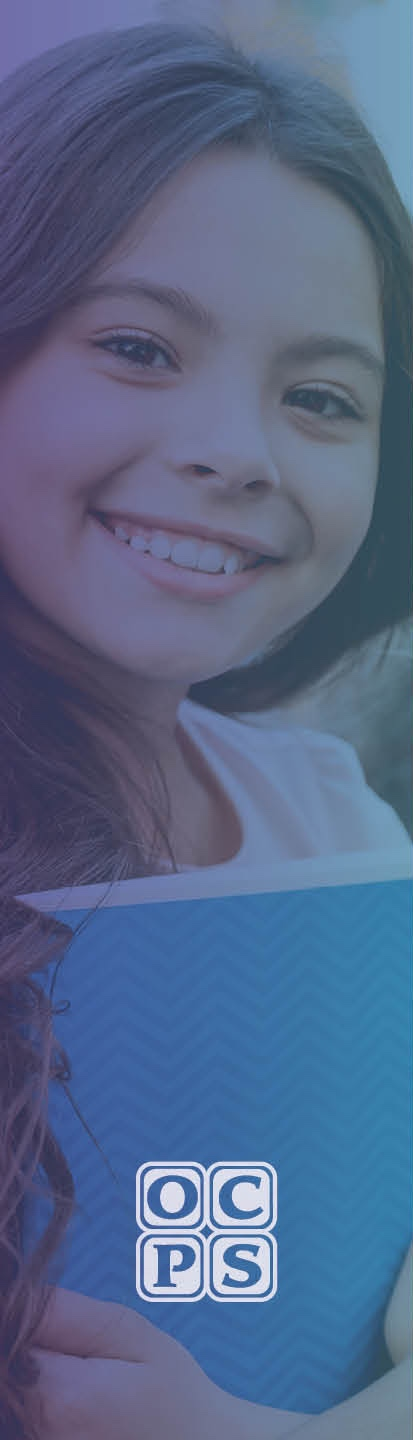
- U.S. DOE's rationale is as follows:
  - "Under the proposed regulation, schools would not be permitted to adopt or apply a one-size-fits-all policy that categorically bans transgender students from participating on teams consistent with their gender identity. Instead, the Department's approach would allow schools flexibility to develop team eligibility criteria that serve important educational objectives, such as ensuring fairness in competition or preventing sports-related injury. These criteria would have to account for the sport, level of competition, and grade or education level to which they apply. These criteria could not be premised on disapproval of transgender students or a desire to harm a particular student. The criteria also would have to minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied."

Transgender Student Update

- Florida Commissioner of Education Manny Diaz, Jr. had a response:
  - “This is a sad, pathetic attempt from a completely inept administration to force their woke worldview on the rest of us. Since Joe Biden can’t get Congress or the Supreme Court to rubberstamp his radical gender ideology, he’s resorted to bullying America’s students through the federal bureaucracy. Good luck – this won’t fly in Florida. “We will never allow boys to play in girls’ sports. We will fight this overreach tooth and nail. And we will stop at nothing to uphold the protections afforded women under Title IX.”

Transgender Student Update

- On June 29, 2021, the lawsuit of D.N. v. DeSantis, Commissioner of Education, FHSAA, Broward County School Board, et al., 0:21-cv-61344 (S.D. Fla. 2021) was filed.
- Student D.N. was a rising eight-grade student at a Broward County middle school. D.N. was a transgender girl who plays soccer. She is on hormone blockers to stop testosterone. She is receiving estrogen.
- Under the new Fairness in Women's Sports Act, D.N. cannot play sports on the girls teams when she enters high school
- D.N. sued under three theories:

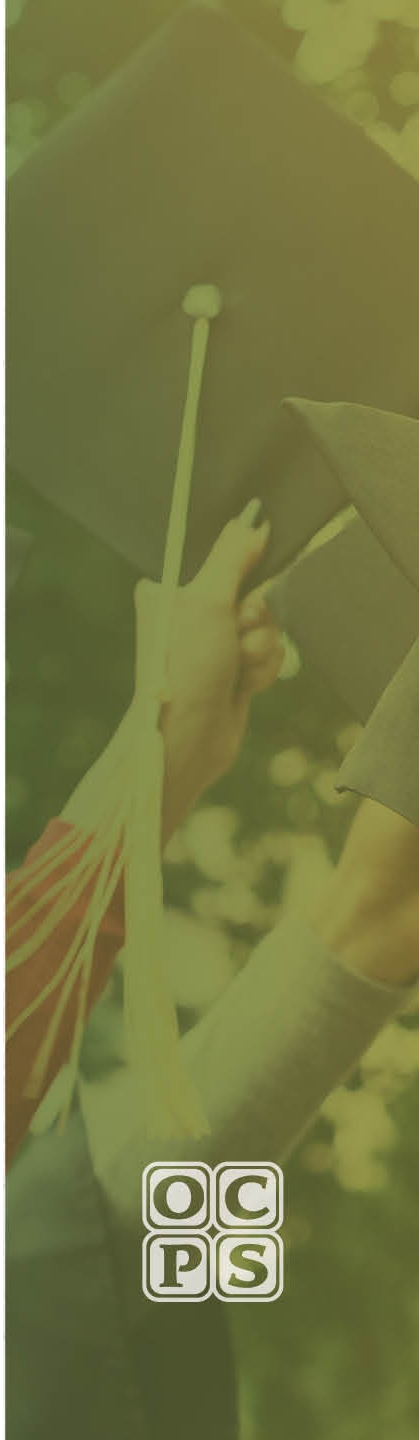


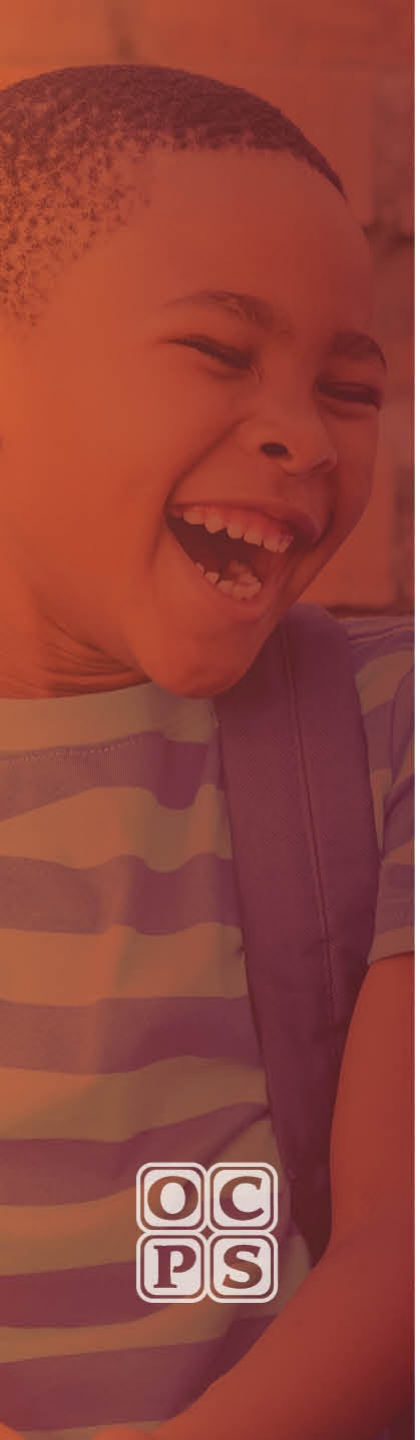
Transgender Student Update

- Title IX:
  - The lawsuit alleges “Under Title IX, excluding transgender individuals from school programs or athletic opportunities within schools is discrimination on the basis of sex.” This is under the theory that D.N. does not conform to gender stereotypes because she was born a biological male, but she presents as a girl.
- Equal Protection under the 14th Amendment:
  - The lawsuit alleges “SB 1028 treats transgender girls and transgender women differently from both cisgender girls and women and transgender boys and men by precluding them from engaging in school-sponsored athletics based on their sex and transgender status.”

Transgender Student Update

- Violation of the right to privacy under the 14th Amendment.
  - The lawsuit alleges: “The right to liberty under the Due Process Clause provides individuals with the right to be free from unnecessary government intrusion into their private affairs and from unnecessary interference with their private conduct. Defendants’ enforcement of the law would require Plaintiff to disclose sensitive medical information that would otherwise not be available, including to third parties, parents and other students who might file claims under this law.”
- The Governor, Commissioner, FHSAA and School Board have all moved to dismiss.



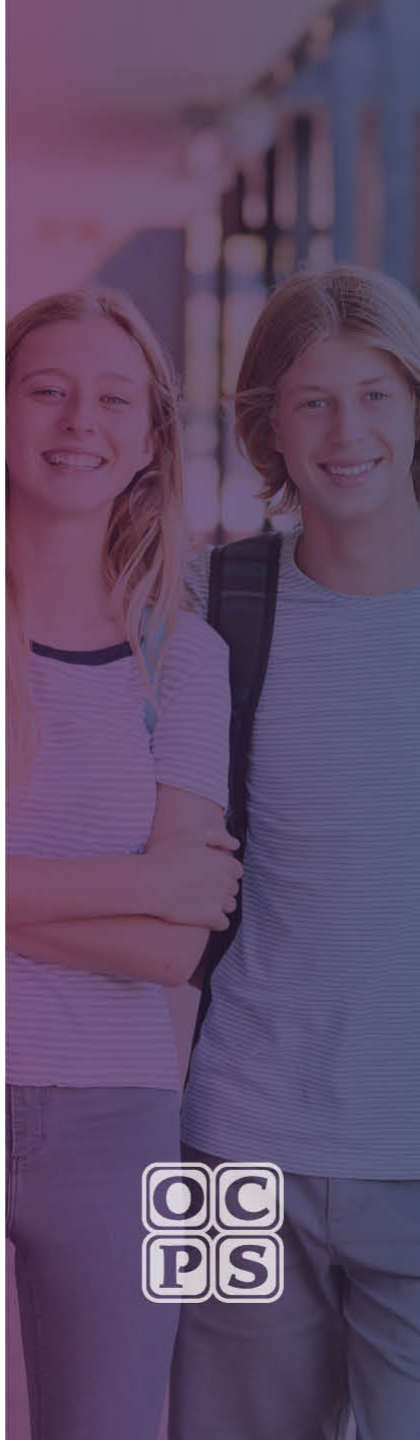


Transgender Student Update

- They argue as follows: “Men’s and women’s athletic teams, separated by sex, are more than a long-standing social custom; they protect and foster the equal opportunities of girls and women to participate in athletics. Courts have long accepted that boys and men are physiologically different from girls and women, and that male athletes, if permitted to compete, would displace and exclude female athletes.”
- This case was placed on hold pending the outcome of Adams v. School Board of St. Johns County, Florida, a case which challenges St. Johns County prohibiting Drew Adams, a transgender male, from using the male bathroom. He was required to use a single stall bathroom or the female bathroom, which corresponds to his sex at birth.

Transgender Student Update

- The 11th Circuit issued its *en banc* decision on December 30, 2022.
- The Court ruled as follows:
  - "This case involves the unremarkable—and nearly universal—practice of separating school bathrooms based on biological sex. This appeal requires us to determine whether separating the use of male and female bathrooms in the public schools based on a student's biological sex violates (1) the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, and (2) Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 et seq. We hold that it does not—separating school bathrooms based on biological sex passes constitutional muster and comports with Title IX."



Transgender Student Update

- This decision does create a circuit split with another circuit. The Fourth Circuit Court of Appeals in Richmond, Virginia, ruled the exact opposite of the 11th Circuit in Grimm v. Gloucester County School Board, 972 F.3d 586, 619-620 (4th Cir. 2020), holding that not allowing a transgender student to go to the restroom in the gender in which he identifies violated both the Equal Protection Clause and Title IX. The School Board in the Grimm case appealed to the U.S. Supreme Court. The U.S. Supreme Court declined to hear the case by a 7-2 vote, with only Justices Alito and Thomas voting to hear the case. Gloucester County School Board v. Grimm, 141 S.Ct. 2878 (2021). If Adams decides to appeal, the United States Supreme Court may have to take up the case to resolve the circuit split.

Transgender Student Update

- The 11th Circuit decision also conflicts with other decisions, including Whitaker v. Kenosha Unified School District, 858 F.3d 1034 (7th Cir. 2017) out of Illinois, which ruled that not allowing a transgender student to use the restroom in which the student identifies is a violation of the Equal Protection Clause and Title IX. The Court in Dodds v. United States Department of Education, 845 F.3d 217 (6th Cir. 2016) out of Ohio, also ruled that not allowing a student to use the restroom in the gender in which the student identifies violates Title IX.

Transgender Student Update

- New Florida Administrative Code Rule 6A-10.086:
  - (2) “If a school board or charter school governing board has a policy or procedure that allows for separation of bathrooms or locker rooms according to some criteria other than biological sex at birth, the policy or procedure must be posted on the district’s website or charter school’s website, and must be sent by mail to student residences to fully inform parents. The policy or procedure must include, at a minimum, the following
    1. Method of student supervision provided for locker rooms, for example a coach or aide, and how that method of supervision ensures the safety and privacy of students; and
    2. Which locker rooms are not separated by biological sex at birth; and
    3. Which bathrooms are not separated by biological sex at birth.
  - (b) School board and charter school governing board policies or procedures must include accommodations or modifications in order to ensure that all students have an opportunity to use a bathroom or locker room separated by biological sex at birth.
    - (3) Exceptions. The requirements for parental notification in subsection (2) do not apply to faculty bathrooms that are not accessible to students, and single occupancy bathrooms.”

Transgender Student Update

- We do not have more than one locker room for students changing for PE at our schools. We separated our locker rooms by biological sex at birth. Transgender Students have to change in a coach's office or single stall restroom.
- We continue to allow transgender students to use group restrooms based upon gender identity while making other group restrooms only separated by biological sex at birth.
- We received some complaints, most of which have subsided.

Transgender Student Update

- House Bill 1521 (2023) was passed on May 3, 2023.
- Subsection 9(a) states “Each educational institution shall, within its code of student conduct, establish disciplinary procedures for any student who willfully enters, for a purpose other than those listed in subsection (6), a restroom or changing facility designated for the opposite sex on the premises of the educational institution and refuses to depart when asked to do so by:
  - 1. For a K-12 educational institution or facility, any instructional personnel as described in s. 1012.01(2), administrative personnel as described in s. 1012.01(3), or a safe-school officer as described in s. 1006.12(1)-(4) or, if the institution is a private school, any equivalent of such personnel or officer.”

Transgender Student Update

- The bill defines “Female” as “a person belonging, **at birth**, to the biological sex which has the specific reproductive role of producing eggs.”
- The bill defines “Male” as “a person belonging, **at birth**, to the biological sex which has the specific reproductive role of producing sperm.”
- “Sex” is defined as “the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present **at birth**.”
- Transgender students will be limited to using single stall restrooms in order to use the restroom and to change under this bill.

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