Legal Advice for Educators Since 1999

Daniel J. Woodring
Woodring Law Firm
Phone: (850) 567-8445
Email: Daniel@WoodringLawFirm.com
Web: WoodringLawFirm.com

2022 Charter School Legal Topics

- Intro- outputs, not inputs, we can do better.
- Key U.S. SCT Cases
- Charter Status Under Federal Law
- Charter Termination Case
- Florida Case Update
- Important Statutory Changes
- Administrative Rules

2022 Charter School Legal Issues

- Key recent U.S. Supreme Court cases regarding school choice and public education.
  - Blaine Cases
  - Coach's Prayer Case

2022 Charter School Legal Issues

- Blaine Cases
  - *Espinoza v. Montana Dep't of Revenue(2020)*
  - *Carson as next friend of O. C. v. Makin*, 213 L. Ed. 2d 286 (2022)

2022 Charter School Legal Issues

(a) The Free Exercise Clause "protects religious observers against unequal treatment" and against "laws that impose special disabilities on the basis of religious status." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. ——, ——, 137 S.Ct. 2012, 2021, 198 L.Ed.2d 551. In *Trinity Lutheran*, this Court held that disqualifying otherwise eligible recipients from a public benefit "solely because of their religious character" imposes "a penalty on the free exercise of religion that triggers the most exacting scrutiny." *Id.*, at ——, 137 S.Ct., at 2021. Here, the application of Montana's no-aid provision excludes religious schools from public benefits solely because of religious status. As a result, strict scrutiny applies. Pp. 2253 – 2257.

Espinoza v. Montana Dep't of Revenue, 207 L. Ed. 2d 679 (2020)

2022 Charter School Legal Issues

- That premise, however, misreads our precedents. In *Trinity Lutheran* and *Espinoza*, we held that the Free Exercise Clause forbids discrimination on the basis of religious status. But those decisions never suggested that use-based discrimination is any less offensive to the Free Exercise Clause. This case illustrates why. "[E]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school." *Our Lady of Guadalupe School* v. *Morrissey-Berru*, 591 U. S. ——, ——, 140 S.Ct. 2049, 2064, 207 L.Ed.2d 870 (2020); see also *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 192, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012).

Carson as next friend of O. C. v. Makin, 213 L. Ed. 2d 286 (2022)

2022 Charter School Legal Issues

Any attempt to give effect to such a distinction by scrutinizing whether and how a religious school pursues its educational mission would also raise serious concerns about state entanglement with religion and denominational favoritism. See *Our Lady*, 591 U. S., at ——, 140 S.Ct., at 2068–2069; *Larson v. Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982). Indeed, Maine concedes that the Department barely engages in any such scrutiny when enforcing the "nonsectarian" requirement. See Brief for Respondent 5 (asserting that there will be no need to probe private schools' uses of tuition assistance funds because "schools self-identify as nonsectarian" under the program and the need for any further questioning is "extremely rare"). **That suggests that any status-use distinction lacks a meaningful application not only in theory, but in practice as well. In short, the prohibition on status-based discrimination under the Free Exercise Clause is not a permission to engage in use-based discrimination.**

2022 Charter School Legal Issues

- Coach Prayer Case

Kennedy v. Bremerton Sch. Dist., 213 L. Ed. 2d 755 (2022)

2022 Charter School Legal Issues

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., 213 L. Ed. 2d 755 (2022)

2022 Charter School Legal Issues

Both the **Free Exercis**e and **Free Speech Clauses** of the First Amendment protect expressions like Mr. Kennedy's. Nor does a proper understanding of the Amendment's Establishment Clause require the government to single out private religious speech for special disfavor.

The Constitution and the best of our traditions counsel mutual respect and tolerance, not censorship and suppression, for religious and nonreligious views alike.

2022 Charter School Legal Issues

When Mr. Kennedy uttered the three prayers that resulted in his suspension, he was not engaged in speech "ordinarily within the scope" of his duties as a coach. *Lane v. Franks*, 573 U.S. 228, 240, 134 S.Ct. 2369, 189 L.Ed.2d 312. **He did not speak pursuant to government policy and was not seeking to convey a government-created message**. 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. Simply put: Mr. Kennedy's prayers did not "ow[e their] existence" to Mr. Kennedy's responsibilities as a public employee. *Garcetti*, 547 U.S. at 421, 126 S.Ct. 1951. **The timing and circumstances of Mr. Kennedy's prayers—during the postgame period when coaches were free to attend briefly to personal matters and students were engaged in other activities—confirms that Mr. Kennedy did not offer his prayers while acting within the scope of his duties as a coach**
Kennedy v. Bremerton Sch. Dist., 213 L. Ed. 2d 755 (2022)

2022 Charter School Legal Issues

It is not dispositive that Coach Kennedy served as a role model and remained on duty after games. **To hold otherwise is to posit an "excessively broad job descriptio[n]" by treating everything teachers and coaches say in the workplace as government speech subject to government control.** *Garcetti*, 547 U.S. at 424, 126 S.Ct. 1951. That Mr. Kennedy used available time to pray does not transform his speech into government speech. Acknowledging that Mr. Kennedy's prayers represented his own private speech means he has carried his threshold burden. Under the *Pickering–Garcetti* framework, a second step remains where the government may seek to prove that its interests as employer outweigh even an employee's private speech on a matter of public concern. See *Lane*, 573 U.S. at 242, 134 S.Ct. 2369. Pp. 2423 - 2426.

2022 Charter School Legal Issues

The District next attempts to justify its suppression of Mr. Kennedy's religious activity by arguing that doing otherwise would coerce students to pray. The Ninth Circuit did not adopt this theory in proceedings below and evidence of coercion in this record is absent. The District suggests that *any* visible religious conduct by a teacher or coach should be deemed—without more and as a matter of law—impermissibly coercive on students. **A rule that the only acceptable government role models for students are those who eschew any visible religious expression would undermine a long constitutional tradition in which learning how to tolerate diverse expressive activities has always been "part of learning how to live in a pluralistic society**." *Lee v. Weisman*, 505 U.S. 577, 590, 112 S.Ct. 2649, 120 L.Ed.2d 467. No historically sound understanding of the Establishment Clause begins to "mak[e] it necessary for government to be hostile to religion" in this way. *Zorach v. Clauson*, 343 U.S. 306, 314, 72 S.Ct. 679, 96 L.Ed. 954. Pp. 2428 - 2432.

2022 Charter School Legal Issues

- Charter Status Under Federal Law
- *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 112 (4th Cir. 2022)
- Charter Day School (CDS),[1] a public charter school in North Carolina, requires female students to wear skirts to school based on the view that girls are “fragile vessels” deserving of “gentle” treatment by boys (the skirts requirement). The plaintiffs argue that this sex-based classification grounded on gender stereotypes violates the Equal Protection Clause of the Fourteenth Amendment, and subjects them to discrimination and denial of the full benefits of their education in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (Title IX).

2022 Charter School Legal Issues

In response, **despite CDS' status as a public school under North Carolina law**, CDS and its management company disavow accountability under the Equal Protection Clause by maintaining that t**hey are not state actors.** These entities also assert that Title IX, the federal statute designed to root out gender discrimination in schools, categorially does not apply to dress codes.

Upon our review, we affirm the district court's entry of summary judgment for the plaintiffs on their Equal Protection claim against CDS, and the court's judgment in favor of the management company on that claim. We also vacate the court's summary judgment award in favor of all defendants on the plaintiffs' Title IX claim and remand for further proceedings on that claim.

2022 Charter School Legal Issues

Ultimately, the state action inquiry in this case is not complicated: (1) North Carolina is required under its constitution to provide free, universal elementary and secondary schooling to the state's residents; (2) North Carolina has fulfilled this duty in part by creating and funding the public charter school system; and (3) North Carolina has exercised its sovereign prerogative to treat these state-created and state-funded schools as public institutions that perform the traditionally exclusive government function of operating the state's public schools.

2022 Charter School Legal Issues

Accordingly, the public-school operator at issue here, CDS, implemented the skirts requirement as part of the school's educational mission, exercising the "power possessed by virtue of state law and made possible only because the [school] is clothed with the authority of state law." *West*, 487 U.S. at 49, 108 S.Ct. 2250 (citation and internal quotation marks omitted). **Under these circumstances, we will not permit North Carolina to delegate its educational responsibility to a charter school operator that is insulated from the constitutional accountability borne by other North Carolina public schools.**

2022 Charter School Legal Issues

But there is much more for concern. The logical consequence of both dissents, and as freely acknowledged by CDS at oral argument in this case, **is that innovation without accountability under the Equal Protection Clause could result in an African American student, another minority student, or a female student being excluded from full participation in North Carolina's charter schools with no recourse other than seeking to have the school's charter enforced or revoked**. And how do a student and her parents go about that process? How many will just give up rather than having to confront the school system and to finance such a challenge?

2022 Charter School Legal Issues

Title IX liability for CMO

In the present case, it is undisputed that RBA receives 90% of its funding from the four schools operated by CDS, Inc., which in turn receive nearly all their funding from public sources, including the federal government. **RBA concedes that CDS uses its federal funding "in part to compensate RBA for services rendered under" the management agreement between CDS and RBA. Under these facts and circumstances, we easily conclude that RBA receives financial assistance "through an intermediary."** NCAA, 525 U.S. at 468, 119 S.Ct. 924. We therefore hold that RBA, as a recipient of federal funds through an intermediary, is subject to the requirements of Title IX. See 20 U.S.C. § 1681(a); 34 C.F.R. § 106.2(i).

2022 Charter School Legal Issues

Dissent:

In short, state action doctrine must not be warped to extinguish the vibrancy provided by school choice. For CDS's dress code here was certainly not state action. **Charter schools are by their very nature freed from state control in their pedagogical and cultural choices; surely their dress codes cannot then be said to be "fairly attributable to the State**." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982).

2022 Charter School Legal Issues

Nor are dress codes or pedagogical policies—or even education more broadly, for that matter—public functions that have been "traditionally the exclusive prerogative of the State." *Rendell-Baker v. Kohn*, 457 U.S. 830, 842, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982) (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 353, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974)). To avoid this commonsense conclusion, the majority gerrymanders a category of free, public education that it calls a traditional state function. *See* Majority Op. at 118, 119–20 ("[I]n operating a school that is part of the North Carolina public school system, CDS performs a function traditionally and exclusively reserved to the state."). This is nothing but a circular characterization assuming the answer to the very question asked.

Peltier v. Charter Day Sch., Inc., 37 F.4th 104, 154 (4th Cir. 2022)

2022 Charter School Legal Issues

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Miami Division

NICHOLAS ORTIZ, a minor by and through his parents Rafael and Lourdes Ortiz

Plaintiff,

v.

MATER ACADEMY INC.

Defendant.

_____/

2022 Charter School Legal Issues

Key Allegations:

To further his Christian faith, over the last four years Nicholas has often brought his Bible to school to read during his free time.

1. For this activity—bringing his Bible to school, reading it, and generally seeking to live according to his faith— Nicholas has been targeted and ostracized by fellow students, school staff, and administrators.
2. The school has, by past practice, created a culture hostile toward Christianity.
3. For example, during a Fall 2021 classroom discussion, Nicholas's science teacher, Mr. Ardieta, singled out Nicholas in front of his peers and questioned him for believing in God. Mr. Ardieta insinuated that Nicholas was ignorant for believing in the Bible. When Nicholas attempted to defend his beliefs, Mr. Ardieta cut him off and said, in front of the class and during the classroom discussion, Nicholas should not believe the Bible.
4. Based upon information and belief, Mr. Ardieta has never been disciplined or reprimanded for his blatant hostility and bullying of a student because of his religious beliefs.

2022 Charter School Legal Issues

Tandon vs. Newsom, U.S. SCT

"This is the fifth time the court has summarily rejected the Ninth Circuit's analysis of California's COVID restrictions on religious exercise. It is unsurprising that such litigants are entitled to relief. California's Blueprint System contains myriad exceptions and accommodations for comparable activities, thus requiring the application of strict scrutiny."

2022 Charter School Legal Issues

Broader Analysis – what should the Charter Schools' position be?

Will SCT Grant Cert in Peltier?

2022 Charter School Legal Issues

- Charter Termination Administrative Case

  Osceola vs American Classical Charter Academy

  Facilities financing, also note St. Cloud Preparatory

2022 Charter School Legal Issues

79. Ms. Graber credibly testified she had received and reviewed ACCA's revised financial statement as of May 31, 2022. ACCA showed a negative fund balance of $1,013,222.05. Mr. Gotz responded "Yes" when asked the question: "You are currently showing, as of this month, today, a fund balance deficit in excess of one million dollars; is that correct?"

2022 Charter School Legal Issues

127. The Sponsor proved by clear and convincing evidence that ACCA did not notice meetings in accordance with sections 286.011(1) and 120.525(1); did not provide minutes “promptly” in accordance with section 286.011(2); and did not post meeting notices and minutes on the website of the school as required under section 1002.33(9)(p)1., and the Contract, section 10, D.

2022 Charter School Legal Issues

129. Section 10, D clearly states that all communications involving governing board members shall be held in compliance with Florida's Sunshine Law, and that ACCA "shall provide ... reasonable notice of all governing board meetings." ACCA did not provide reasonable notice for all of its governing board meetings, nor did it provide any notices for the finance committee meeting. The finance committee, which served as an advisory committee and reported to ACCA's governing board of the finance committee's actions, failed to meet in the Sunshine. ACCA violated section 286.011 by failing to properly notice the governing board and finance committee meetings, and also failed to provide the minutes to all the meetings. The Sponsor proved these violations with clear and convincing evidence.

2022 Charter School Legal Issues

132. The evidence was unrefuted that only 10 of ACCA's 28 teachers were certified, The Sponsor proved by clear and convincing evidence that ACCA materially violated section 1002.33(12)(f), and section 2, D. 1. f. xiii., and 2 D.1. g. i. of the Charter Contract. As such, the School Board has proven by clear and convincing evidence it had good cause to terminate the Charter Contract for material violations of law under section 1002.33(8)(a)3. and Section 2, D.1. d. of the Charter Contract.

2022 Charter School Legal Issues

133. The evidence proved that students were not provided ESE as outlined in IEPs because there was no certified ESE teacher providing instruction on campus for August and most of September 2021. **ACCA's failure to educate in accordance with IEPs by failing to have a certified teacher is a material violation of law** under section 1002.33(8)(a)3. *See also* § 1002.33(16)(a)3., Fla. Stat. (stating that a charter school "shall be in compliance" with "those statutes pertaining to the provision of services to students with disabilities.").

2022 Charter School Legal Issues

137 ACCA's belated and inadequate efforts to cure some of its violations, such as **FSSAT, SESIR, Fortify-FL, Alyssa's Law, the Jessica Lundsford Act, the Hope Scholarship, and its fire safety deficits,** were too little and too late. Students cannot achieve in an environment where their health, safety, and welfare is not made a priority. ACCA's reluctance to timely address these issues demonstrates a failure of ACCA.

138 Pursuant to section 1002.33(16)(b)2., "charter schools shall be in compliance" with "Chapter 119, relating to public records." **ACCA has failed to timely respond to at least three requests for public records**.

2022 Charter School Legal Issues

- Florida Case Update
  - Acad. for Positive Learning, Inc., et al v. Sch. Bd. of Palm Beach County
  - Vitale vs. Palmetto Charter School

2022 Charter School Legal Issues

- Academy for Positive Learning
  - Sovereign immunity issue on appeal at 4th DCA, regarding retroactive payment for periods prior to court decision.

2022 Charter School Legal Issues

- Vitale vs Palmetto Charter School
  - “After listening to three days of testimony and examining thousands of exhibits, this Court is convinced that this case is about a father's frustration with his child's school which he believes "targeted" (his word) his son. This case is about Mr. Vitale's filing of multiple and extensive public record requests over a period of approximately a month and, despite the board members’ and PCS' s timely and thorough responses, his filing his Complaint anyway.”

2022 Charter School Legal Issues

This cause is the quintessential example of: Simply because you can sue someone doesn't mean that you should. As will be discussed in detail herein, Mr. Vitale fell woefully short of establishing that either of the Defendants here violated Chapter 119. As indicated above, however, that may not have been Mr. Vitale's ultimate goal. In its Response to the Order to Show Cause, PCS argued that Mr.Vitale "has attempted to improperly weaponize the Public Records Act against PCS as a way of airing his personal grievances." This Court agrees.

2022 Charter School Legal Issues

- Important Statutory matters
  - Referendum Issues?
  - Provisions relevant to charter contracts
  - Facility Issues

2022 Charter School Legal Issues

Referendums: Issue of who is in the denominator for determining the distribution of funds- FEFP now also has funds for private school scholarships.

"Funds levied under this subsection shall be shared with charter schools based on each charter school's proportionate share of the district's total unweighted full-time equivalent student enrollment and used in a manner consistent with the purposes of the levy. The referendum must contain an explanation of the distribution methodology consistent with the requirements of this subsection."

2022 Charter School Legal Issues

Charter contract provisions 1002.33 (2002)edits

(b) Before a vote on any proposed action to renew, terminate, other than an immediate termination under paragraph(c), or not renew the charter and at least 90 days before the end of the school year ~~renewing, nonrenewing, or terminating a charter~~, the sponsor shall notify the governing board of the school in writing of the proposed action to renew, terminate, or not renew the charter. A charter automatically renews with the same terms and conditions if notification does not occur at least 90 days before the end of the school year.

2022 Charter School Legal Issues

A sponsor may not charge or withhold any administrative fee against a charter school for any funds specifically allocated by the Legislature for teacher compensation.

2022 Charter School Legal Issues

j. The sponsor may ~~shall~~ not impose additional reporting requirements on a charter school as long as the charter school has not been identified as having a deteriorating financial condition or financial emergency pursuant to s. 1002.345 ~~without providing reasonable and specific justification in writing to the charter school~~.

2022 Charter School Legal Issues

- Facilities
  - Statutory language
  - Discussion about feasibility

2022 Charter School Legal Issues

Notwithstanding any other provision of law, an interlocal agreement or ordinance that imposes a greater regulatory burden on charter schools than school districts or that ~~between a school district and a federal or state agency, county, municipality, or other governmental entity which~~ prohibits or limits the creation of a charter school ~~within the geographic borders of the school district~~ is void and unenforceable. An interlocal agreement entered into by a school district for the development of only its own schools, including provisions relating to the extension of infrastructure, may be used by charter schools.

2022 Charter School Legal Issues

The sponsor may ~~also~~ choose not to renew or may terminate the charter only if the sponsor expressly finds that one of the grounds set forth below exists by clear and convincing evidence:

1. Failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter.
2. Failure to meet generally accepted standards of fiscal management due to deteriorating financial conditions or financial emergencies determined pursuant to s. 1002.345.
3. Material violation of law.
4. ~~Other good cause shown.~~

2022 Charter School Legal Issues

A local governing authority must treat charter schools equitably in comparison to similar requirements, restrictions, and site planning processes imposed upon public schools that are not charter schools, including such provisions that are established by interlocal agreement. An interlocal agreement entered into by a school district for the development of only its own schools, including provisions relating to the extension of infrastructure, may be used by charter schools. A charter school may not be subject to any land use regulation requiring a change to a local government comprehensive plan or requiring a development order or development permit, as those terms are defined in s. 163.3164, that would not be required for a public school in the same location.

2022 Charter School Legal Issues

and the governing board, pursuant to subsection (7), is ~~shall be~~ exempt from ad valorem taxes pursuant to s. 196.1983. Any library, community service, museum, performing arts, theatre, cinema, or church facility; any facility or land owned by a~~,~~ Florida College System institution or~~, college, and~~ university; any similar public institutional facilities; and any facility recently used to house a school or child care facility licensed under s. 402.305 may provide space to charter schools within their facilities under their preexisting zoning and land use designations without obtaining a special exception, rezoning, or a land use change.

2022 Charter School Legal Issues

To assist the school district in forecasting student station needs, the entity levying the impact fees shall notify the affected district of any agreements it has approved for the purpose of mitigating student station impact from the new residential dwelling units. Any entity contributing toward the construction of such facilities shall receive a credit toward any impact fees or exactions imposed for public educational facilities to the extent that the entity has not received a credit for such contribution pursuant to s.163.3180(6)(h)2.

2022 Charter School Legal Issues

- Administrative Rules
  - Need to carefully review rules to determine if charter policies need to be adopted or changed.
- Disqualification Rule Impact-
- Discuss also legislative impact such as minimum salary requirements applied to charters

Wrap Up

- Questions?
- Can contact me at:
  - Daniel@woodringlawfirm.com
  - 850 567 8445