

School Counselors: Legal and Ethical Complications of Working with Minors in Schools

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Values: Grossman v South Shore Community School District

7th Circuit Court
of Appeals

Religious
Hostility

Or Conduct

Obligation Extends to PARENTS



18 States Parents' Bill of Rights





Federal Law Parents Bill of Rights: MARCH 24, 2023

It would codify federal education law to give parents and legal guardians access to school curricula, library books and other teaching materials, give parents advance notice prior to medical or mental health screenings, and mandate a standard number of parent-teacher meetings.

Veto power to Parents: Curriculum Retention



Mahanoy Area School District v. B.L. **FREE SPEECH CASE**



SCOTUS: “Parents must be allowed to discipline.”



Parker v. Hurley, 2007, Massachusetts
Morrison v. Board of Education of Boyd
County, 2006



**WOULD NOT HAPPEN TODAY
IN MOST STATES**




Would not Happen Today

Virginia Teacher refuses to use Pronouns and names according to Identity.

Hello
my name is

**Kansas to pay \$95,000 in
2022**

My pronouns are:



California mom sues school district that allegedly counseled her daughter to transition gender

Aurora Regino says a school counselor helped her daughter consider a gender transition without parental notification.



"Strict

"Strict scrutiny" requires that any law infringing a fundamental right must be narrowly tailored to serve a compelling governmental interest by the least restrictive means.

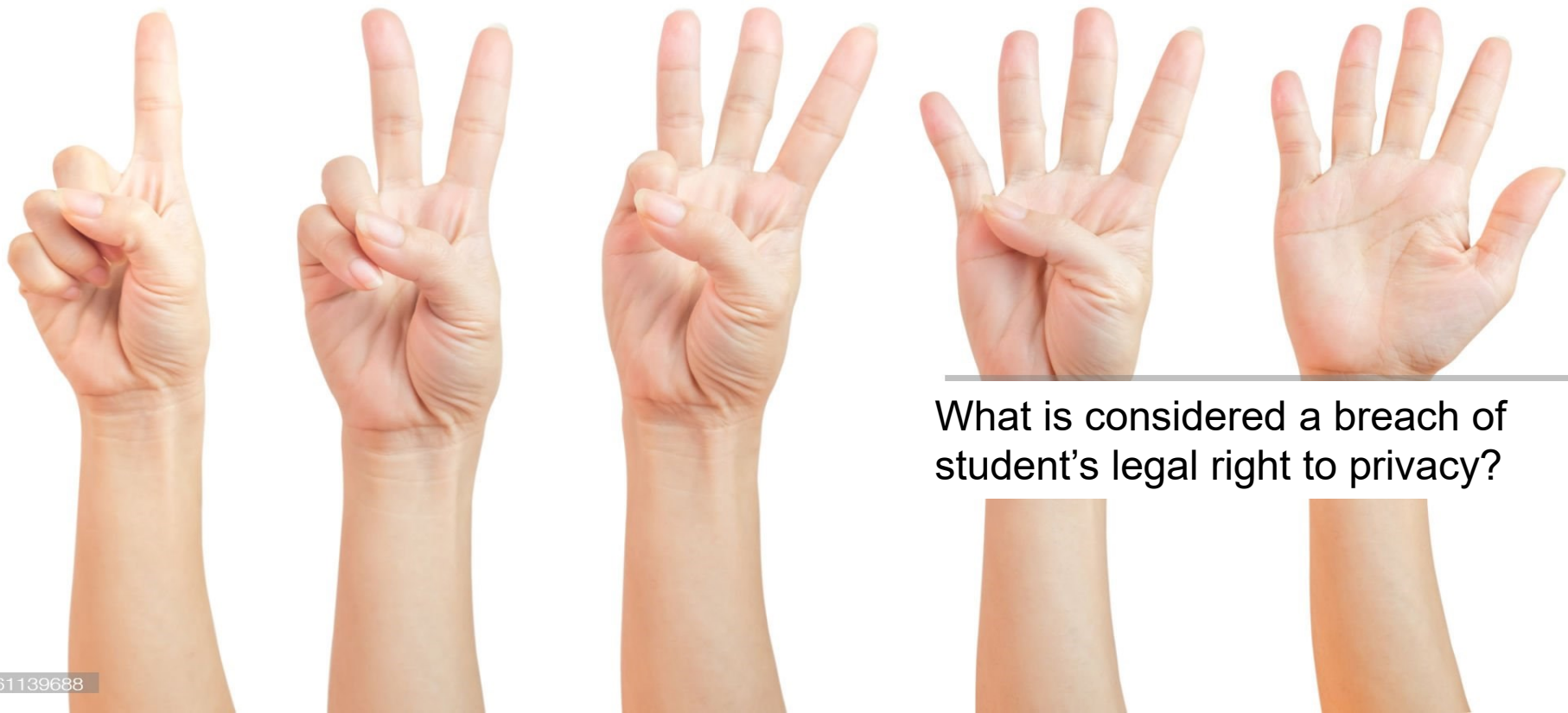
Strict scrutiny

- ▶ The law must have a “compelling government interest” and be “narrowly tailored”.
- ▶ Examples: issues involving **race** and **religion**
- ▶ This is the most stringent level of scrutiny; laws reviewed using strict scrutiny are frequently ruled unconstitutional



PRIVACY

Legal Status of Minors



What is considered a breach of student's legal right to privacy?

School Psychologist Shared Info about a Student her Husband later Raped: Sentenced August 2023



“Clear Imminent Danger” to “Serious and Foreseeable Harm”





June 2023 Richmond, Virginia Current Court Case

External Investigation 2024. H.S. graduation Shawn Jackson and his stepfather Renzo Smith were killed.
“Squeeze him in.”

Was this foreseeable?



IN LOCO
PARENTIS



Keeper of the Personal Social Emotional



Informed
Consent

small groups

The background of the slide features a light blue gradient. Overlaid on this are several dark blue, stylized silhouettes of human figures. Some figures are standing upright, while others are leaning forward, suggesting a group interaction or a meeting. The silhouettes are semi-transparent, allowing the background to show through.


Confidentiality
Informed Consent
Skill Level
Setting
Parental Rights



Academic Instruction

Standard of Care

- CODES
- CREDENTIALS
- SCHOOL BOARD POLICY
- CIVIL LAWS, CRIMINAL LAWS
- COURT CASES
- EXPERT WITNESSES



Norms, customs that have withstood the test of time

ASCA Codes Matter





KITCHENER'S 5 MORAL PRINCIPLES

AUTONOMY,
INDEPENDENCE

BENEFICENCE

JUSTICE

NONMALEFICENCE

FIDELITY

Criminal



**Professional Practice,
Administrative
Hearing**

Negligence

Failure to Report Child Abuse



discretionary

adjective dis·cre·tion·ary \ -'kre-shə-
,ner-ē \

ministerial

adjective min·is·te·ri·al \ ,mi-nə-'stir-ē-əl



South Carolina School Counselor

Grow said the student was not in imminent danger and she used her professional judgment.



More Good News than Troublesome News 2/14/24

Abington High School 17-year-old female student ***disclosed to a school counselor*** that she was being sexually abused by Jones (school official) since November 2023.

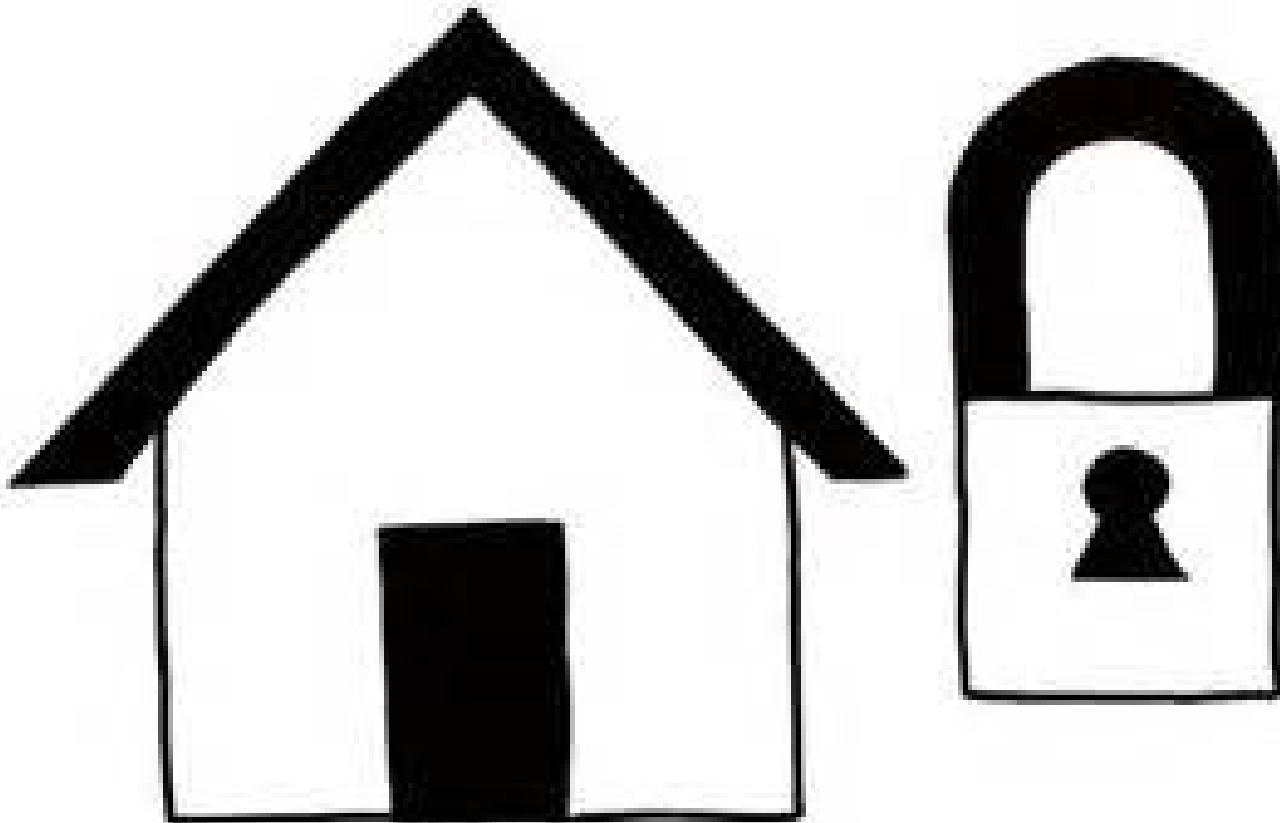


School Counselor Warned A.P to search the 6 year old

April 2024, the A.P. was charged with 8 felony counts.

“Just an hour before the shooting, ***a school counselor*** asked Parker to check if the boy had a gun, but she declined to do so, the lawsuit alleges.”

Fourth Amendment Right: Illegal Search and Seizure



Background Information Summary

- ▣ Seven Hills Middle School, Nevada City, CA 3/2008
- ▣ Rumors of pregnancy
- ▣ Steven Davis, school counselor, spoke to the girl.
- ▣ She denied it and she identified another student for starting the rumors.
- ▣ 12 years old forced to take a pregnancy test by the counselor during school hours. Results came out negative.
- ▣ Parents had no knowledge of the pregnancy test

According to Plannedparenthood.org, in California and NY no parental involvement is require to have an abortion.

Counselor Must Face Parents

Good

the reporter, to the best of his or her knowledge, had reason to believe that the child in question was being subjected to abuse or neglect. Even if the allegations made in the report cannot be fully substantiated, the reporter is still provided with immunity. There is a 'presumption of good faith.' " provide some form of immunity from liability for persons who in good faith report suspected instances of child abuse or neglect under the reporting laws. Immunity statutes protect reporters from civil or criminal liability that they might otherwise incur. This protection is extended to both mandatory and voluntary reporters" (Child Welfare Information Gateway, 2012, p. 2).

Perino of Prince William County, Va.

Criminal



Professional Practice,
Administrative
Hearing

Negligence

Legally Speaking

- **First Amendment**
- **Substantial Interest**
- **Qualified Privilege**
- **Legitimate Educational Interest**



ARTICLES in addition to, and Amendment of the Constitution, proposed by Congress, shall be valid to all intents and purposes as part of the said Constitution: Provided, that no such Amendment shall be made so as to alter the following Principles:—

First Amendment
Rights:
Are they absolute?


A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

No law shall be passed respecting an establishment of Religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures; and particularly demanding

A Position of Trust

The forward:

I coach girls basketball, work in an office where I am the only male counselor, and am responsible for 425 high school students a year, about half of whom are females. Suffice it to say, I have spent a considerable amount of time around, and with, the fairer sex.

A wooden gavel is positioned in the foreground, resting on a stack of books. The background features a classical building with a portico supported by columns. The entire image has a blue tint.

N.C. v. Bedford
Central S. D
Substantial
Interest

Qualified Privilege

Was she
legal?



If the statement is malicious, evil with ill intent it is not qualified

- 1) Good faith
- 2) without malice
- 3) not voluntary but in answer to an inquiry
- 4) believe the communication to be true
- 5) Probable grounds for the suspicion
- 6) Must not go further than to Truly state the facts upon which the suspicion was founded
- 7) Protecting the interests of the parties involved
- 8) Performing duty to society

Legitimate Educational Interest

- Allows sharing among school officials without parental consent
- FERPA authorizes institutions to establish Criteria for LEI
- Sharing with Third Parties Requires Written Permission of Parent or Eligible Student

Super Highway to Losing your Job

Falsify Records



Donna Hill

What Can We Take From This Case?

The courts do not take kindly to educators/counselors exhibiting favoritism

Counselors charged with moral turpitude are not entitled to admonishment and time for improvement.

Deliberate, intentional or willful acts can get you fired.

Counselors must exercise a higher standard of care than other educators

FERPA AND PPRA



Difference: Protection of What is collected (FERPA) and what might be collected (PPRA)

And then there is COPPA



The 8 Protected Areas

STUDENT OR FAMILY

1. Political beliefs;
- 2. mental or psychological problems;**
3. sex behavior or attitudes
4. illegal, anti-social, self-incriminating, or demeaning behavior;
- 5. critical appraisals of other individuals with who respondent have close family relationships;**
6. legally recognize privileged;
7. religious practices; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

School Climate questions are okay.

Are there adults you can talk to if you are a victim of sexual assault. Rather than “Are you a victim....”





NEGLIGENCE

- **DUTY OWED**
- **DUTY OWED BREACHED**
- **CAUSAL CONNECTION BETWEEN BREACH**
- **INJURY SUFFERED**



75% of Youth First Attempt

80% of these suicides were by boys, and 85% firearm.

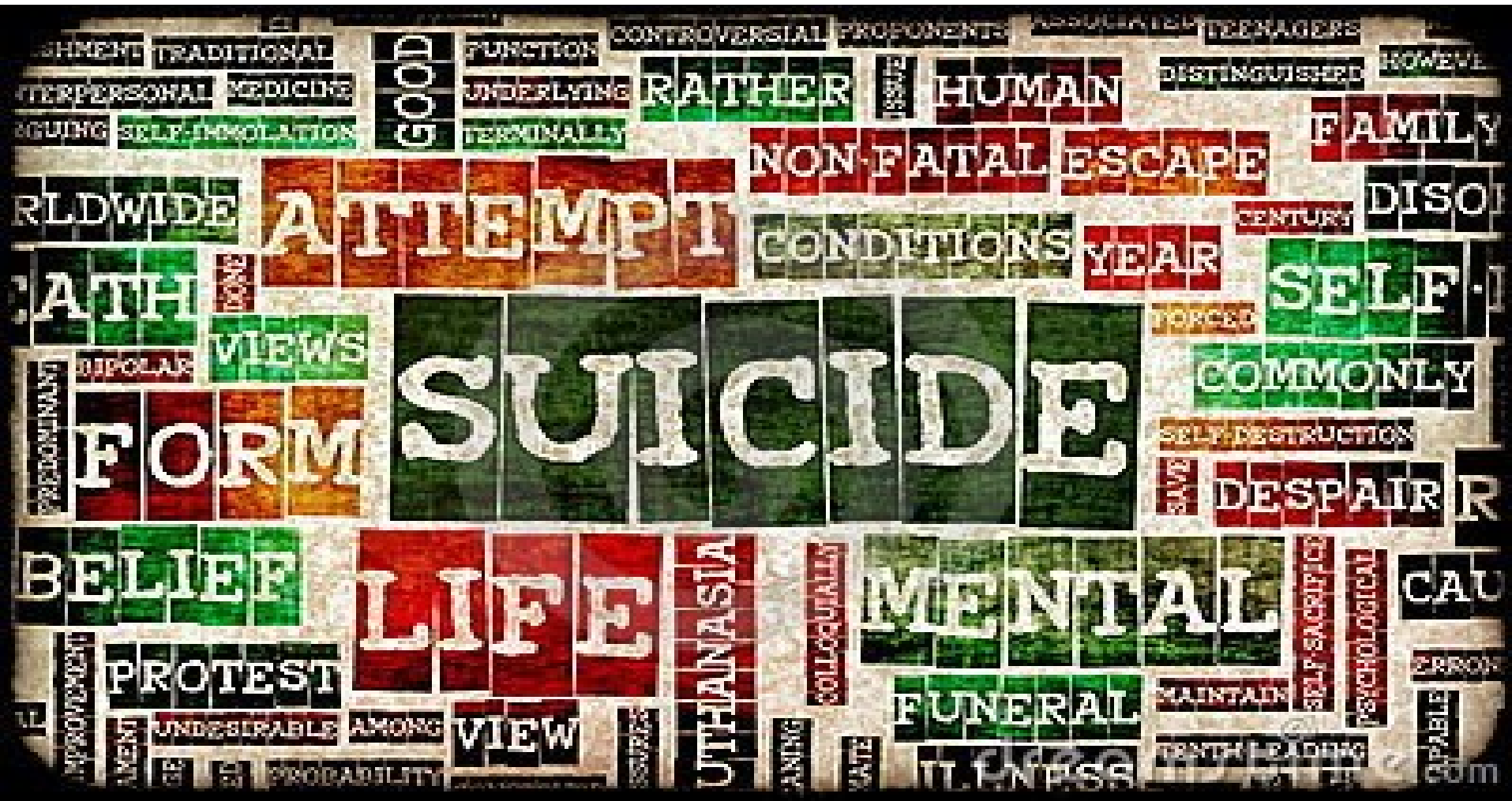
70% a precipitating stressor.

American Academy of Child Adolescent Psychiatry, 2018.

Failure to Call Parents



Eisel v. Board of Education of Montgomery County, 1991



10 Red Flags

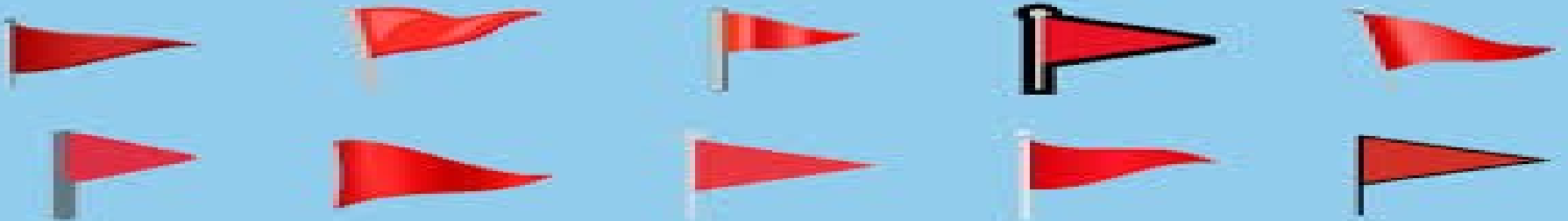
Rogers v Christina School District

Good Morning Everyone,

After talking with Roger Ellerbe in great detail [four hours] I feel that he is not a threat to himself. Roger was having a bad day yesterday with build [sic] up anxiety from home and girl friend issues. His girl friend broke up with him on Sunday he couldn't handle what was happening to him leading to him thinking that no one cares about him. . . . I got Roger and [his girlfriend] together to talk about their relationship and will call Grandmother letting her know what's going on. I also gave Roger a packet for the wellness center to get filled out and return [sic] back to me. Roger agreed to come to me, Mr. Newman or the wellness center if he has any concerns. I had Roger write a statement as to how he was feeling yesterday and today. If anyone [sic] of you think we should do anything else please let me know.

Keeping you all informed!

Mrs. Finney



Loudoun County Public School Counselor

Sued the counselor and not the district to avoid the district's shield of governmental immunity.

- Listen to peer reports
- 18 year-olds cannot render us mute
- Parents can do what we cannot

MIKELL v. SCHOOL ADMIN. UNIT 33

Suicide Assessments



Child abuse is the exception to calling parents:

Principal sent to jail ... charged with failure to report suspected sexual abuse of a student.

Both were fired.

The Medical and Mental Health Profession Risk

stratification

many cases with a very high false-positive rate
(Carter & Spittal, 2018).

ASCAs Information Gathering Tool



<https://www.schoolcounselor.org/getmedia/7cfa1f6a-2c5a-4785-90e2-bf515c07232d/suicide-information-gathering-toolkit.pdf>

Title IX: So Much More than Sports

- Sexual Harassment
- Dating Violence
- Bullying
- LGBTQ+
- Pregnancy
- And yes, even sports

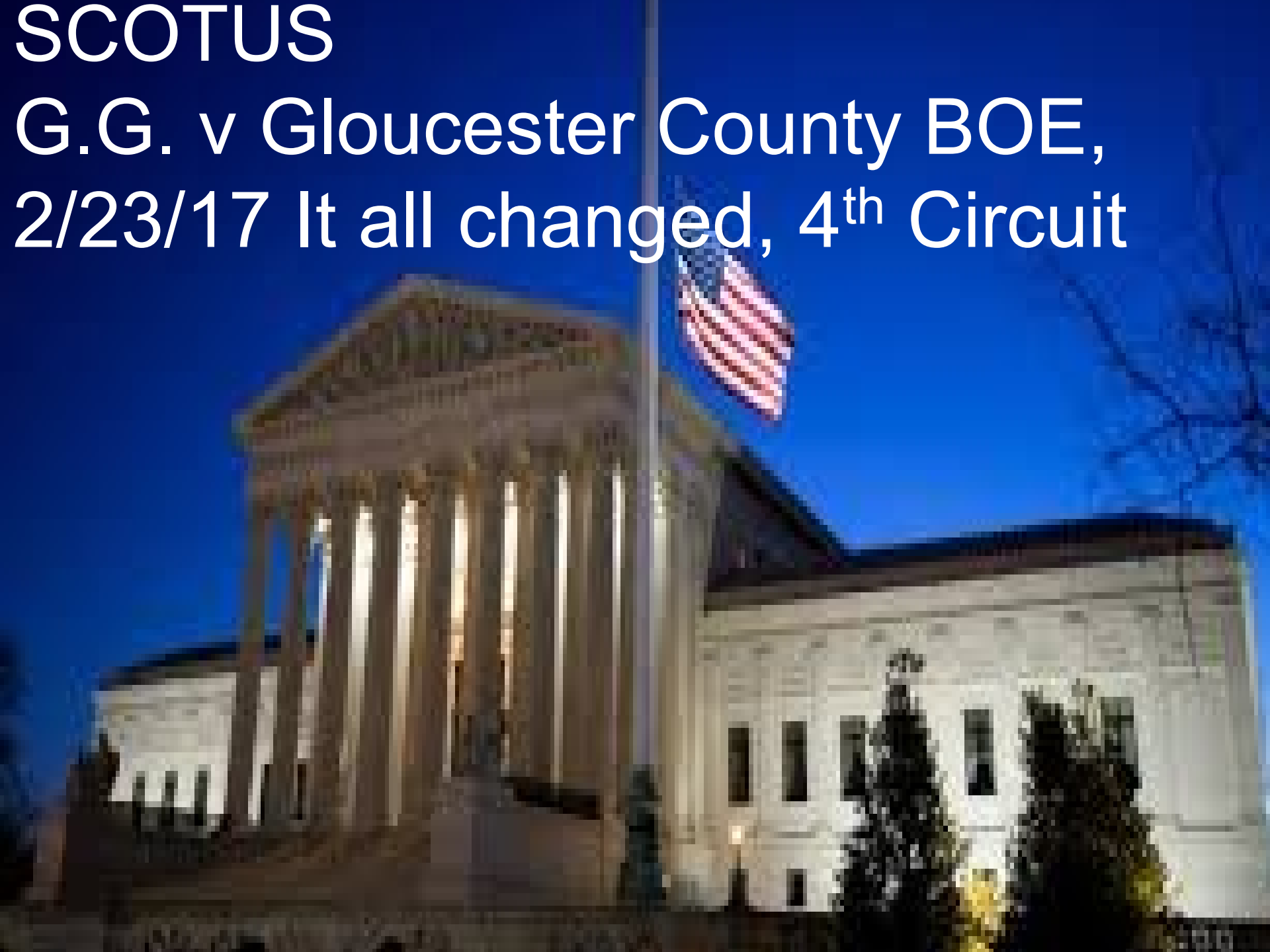




Bostock v Clayton


SCOTUS

G.G. v Gloucester County BOE,
2/23/17 It all changed, 4th Circuit



For Gavin Grimm August 25, 2020 The Fourth Circuit Court of Appeals ruled it is a violation of Title IX to segregate transgender students from their peers for restrooms.





BOLD