

WVCSD EdTalk: July 6, 2022
Dr. David Leach, Superintendent of Schools

Before its term ended on June 30, the United State Supreme Court made important decisions influencing public education. These two landmark decisions examine the free exercise clause of the first amendment and the separation of church and state. Each vote was six to three along ideological lines.

In *Kennedy v. Bremerton School District*, the United States Supreme Court ruled that a school district in Washington state violated the U.S. Constitution by terminating a football coach for praying at the 50-yard line after each game. This case attempted to balance teachers' and coaches' religious and free speech rights with the rights of students not to feel pressured into participating in religious practices. While the minority justices said there was evidence that Bremerton High School Coach Joseph Kennedy's prayers at the 50-yard-line had a coercive effect on students and allowed him to incorporate his "personal religious beliefs into a school event," the justices in the majority emphasized that the coach's prayer came after the game was over and at a time when he wasn't responsible for students and was free to do other things.

Our district will continue to permit students and staff to participate in constitutionally protected prayer inside of the schools in accordance with applicable statutes and/or legal precedent pertaining to individual rights protected by the United States Constitution. Currently, Board of Education policy neither prohibits nor otherwise disallows individuals' rights protected by the Constitution in District schools. I do not anticipate any change in school policy or practice involving organized or faculty-led student prayer during instructional time. However, the court overturned the "lemon" test, which held that a law or practice is constitutional if it has a secular purpose, its primary effect does not promote or inhibit religion, and it does not create an "excessive entanglement" with religion. With the elimination of the Lemon test, future challenges and controversies for school administrators will likely be more difficult to navigate.

In *Carson v. Makin*, the US Supreme Court looked at a law from Maine that says students can use public money to choose a high school, but they can't use it to pay tuition at a religious school. The Court decided that the law was against the first amendment because it treated private religious schools differently because of their religion. This system of funding secondary schools in Maine exists because large portions of the state have a low population density, so vouchers are required for many students to attend secondary school. Secondary school students in Maine can now use public funds to pay for religious education.

This decision did not directly overturn the "Blaine amendments" in the state constitution, which say that the government can't give money now to religious schools. In New York, for instance, the Blaine amendment restricts the use of public funds for religious schools, except for transportation. Public schools generally transport students from non-public schools up to 15

miles from a central pickup location. An Albany County Supreme Court justice ruled last fall that school districts must transport non-public students on all days when the non-public school is open, regardless of whether the public school district is in session. Last month, the Appellate Division of the Third Department reversed the lower court's decision in favor of the school district and the State Education Department.

Even though the Carson case has no immediate effect on New York, if the Blaine amendment is found to be unconstitutional in the future and a Governor is elected who supports funding religious education with public funds, that Governor would not have to deal with the state constitutional shield that has stopped past legislative attempts to further fund religious schools.