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School dispute gives Texas court something to pray over

- By John Austin CNHI State Reporter
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AUSTIN — After The Episcopal School of Dallas gave a student a choice of withdrawing or expulsion for claimed policy violations, he sued, but a state court said it would not act.

The conflict ended up at the Supreme Court of Texas, where lawyers for the former pupil and his father argue the school can't shield itself from liability over the child's emotional trauma, saying the judicial system should treat the dispute as it would any other civil lawsuit.

The school stands behind a First Amendment claim of protection for faith-based organizations' right to make rules without judicial interference.

Critics of the school's actions say that allowing it to assert so-called ecclesiastical abstention doctrine — a constitutional protection that allows faith-based organizations to have religious beliefs, and to make religious decisions without judicial interference — opens the door to unchecked abuse.

“The case affects every student in faith-based private schools throughout the state of Texas,” Dallas attorney Lawrence J. Friedman, who represents the father and son, said in a videotaped statement. “It may even have implications for every student attending faith-based schools throughout the country.”

The argument goes that if allowed, the precedent could spread to religiously affiliated universities, nursing homes or day-care centers.

Doe Jr. violated ESD policy when he and a friend left campus during the school day without permission, according to legal response filed by the school's attorneys.

The friend said that he and Doe Jr. smoked marijuana in Doe's vehicle.

Doe Jr. acknowledged leaving school after saying he had not, which also violates the ESD code.

Refusal to allow a vehicle search was yet another infraction.

Janet Heimlich, founder of the Child-Friendly Faith Project, filed an amicus brief siding with John Doe and John Doe Jr., who was a minor when the dispute arose.

"What if it's a school that teaches yoga and all of a sudden says they're faith-based?" Heimlich said. "We don't set up a disciplinary system in which children religious institutions are less protected than children who are in secular public institutions."

In 2013, the Texas Supreme Court decided a case that suggested most "disputes involving churches should be decided based on neutral principles of law," according to a blog post from Telios Law, a Colorado firm that represents churches and nonprofits.

"Somewhat to the dismay of church law scholars, the court stated that Texas courts are required to apply neutral principles to decide issues such as 'land titles, trusts, and corporate formation, governance, and dissolution, even when religious entities are involved.'"

But, said Telios attorney Theresa Sidebotham, "If the religious organization makes a decision for religious reasons or even partly religious reasons, the court is supposed to stay out of it.

“The plaintiffs were arguing that this is not a religious organization.”

Lawyers for the Does said the college-prep school’s claims to be a faith-based entity were nominal.

The vast majority of students are not Episcopalians, and Friedman said that it advertises itself as a secular school.

Not so, argues the school, where tuition for pupils in high school grades is \$29,495 per year.

And, the Does’ attorneys argued in their Supreme Court brief, “this Court has never considered whether a private school that claims to be a religious institution may rely on the (abstention doctrine) when the claims at issue concern the school’s secular promises and warranties about the education of its students.”

In their brief, Episcopal School attorneys wrote that is “founded on and operated in accordance with the Episcopal faith, including daily chapel by ordained Episcopal ministers assigned by the Dallas Diocese.

“The dispute is not a ‘secular’ one; it falls directly within the ecclesiastical abstention doctrine because the Episcopal School has a constitutionally protected right to determine who may remain a member of its religious community, how to discipline its members and how to interpret and apply its own governing policies.”

Texas has 864 private, accredited, nonprofit schools, according to the Texas Private Schools Association.

Usually 60 to 70 percent of all private schools are faith-based, according to the association.

The parties are awaiting a decision on whether the court will ask for a full briefing in the case.

“Courts around the country wrestle with the religious liberty issue, but most recognize that there are secular aspects to educational instruction,” Craig Enoch, appellate counsel for the Does, said in a statement. “In this case, ESD expressly contracted that its education and disciplinary rules are secular and not religious in nature.

“This case presents a good vehicle for the Supreme Court of Texas to provide guidance in how this tension is resolved.”

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