



AMY CONEY BARRETT AND EDUCATION: WHERE DOES SHE STAND?



With the memory of Merrick Garland's thwarted nomination resonating and the rank hypocrisy fouling the Senate air, Senate Majority Leader Mitch McConnell and his colleagues quickly ushered then-judge [Amy Coney Barrett](#) through a performative confirmation process. The U.S. Supreme Court's newest member will soon begin to rule on cases with the potential to affect generations of students, teachers, and schools. Barrett's writings, positions, and track record so far suggest that her education-related decisions may be the antithesis of those of her predecessor, the late Ruth Bader Ginsburg, [who was known for supporting LGBTQ rights](#), appreciating the separation of church and state, and developing jurisprudence advancing gender equity.

Unlike Ginsberg, a graduate of New York City's school system, Barrett has limited personal experience with public education. A graduate of a Catholic girls' school in Louisiana, she has also sent her own children to religious schools. For nearly three years, she served on the board of trustees of a network of private, Christian schools that [discriminated against LGBTQ](#) parents, students, and employees.

During her Senate confirmation hearings, Barrett [said](#) that she had "been nominated to fill Justice Ginsburg's seat, but no one will ever take her place." Barrett will indeed be a very different judge, including in the realm of education. She [described *Espinoza v. Montana Department of Revenue*](#) (a 2020 U.S. Supreme Court decision that required the state to allow public fiscal support for religious schools even though its constitution banned the practice) as an example of the court's view that "religious institutions cannot be discriminated against or excluded from public programs simply because they are religious." And she [called *Brown v. the Board of Education*](#) a "super precedent" that would be "unthinkable" to overrule, even though an [article](#) she coauthored notes that full adherence to her doctrine of originalism (strict adherence to the original meaning of the constitution's words) would require its re-

versal. Barrett has also [publicly expressed doubt](#) that Title IX protects transgender students who want to use school restrooms or locker rooms that align with their gender identities.

As a judge appointed by President Donald Trump in 2017 to the Court of Appeals for the Seventh Circuit, Barrett has been involved in several notable decisions involving education. Here's a sample, culled from an article in *Education Week*:

Doe v. Purdue University (2019) was filed by a male former student at Indiana's Purdue University, which had suspended him for a year after he was accused of sexual violence, leading to a discharge from the ROTC and the loss of a related scholarship. Barrett's opinion, in favor of the student, concluded that he was "denied an educational benefit on the basis of his sex" because of a fundamentally unfair hearing and decision process that was biased in favor of the female accuser. Since that time, U.S. Secretary of Education Betsy DeVos has [taken steps](#) to further protect the due process rights of students accused of sexual misconduct. "Many universities and advocates for survivors of sexual assault state that these changes will make it harder to convince people to come forward and file reports, as the new guidance offers little protection and support for survivors of sexual assault," NEPC Fellow Elizabeth Meyer said last year in an [interview for this newsletter](#).

Consider also two cases concerning alleged discrimination based on the plaintiff's disability. In both cases, Barnett signed onto opinions affirming the granting of so-called summary judgment (dismissing the lawsuit because the plaintiff is not entitled to win based on the facts that the plaintiff does not dispute). In *Grussgott v. Milwaukee Jewish Day School* (2018), the plaintiff was an instructor at a Jewish private school. The panel held that the school was protected by a "ministerial exception," based on a 2012 Supreme Court case that found that churches were exempt from discrimination claims made by their ministers.

In *P.F. v. Taylor* (2019), Barrett joined her colleagues in rejecting claims of Wisconsin students with disabilities who had unsuccessfully attempted to use the state's open enrollment laws. The students were denied transfers to new school districts because those new districts said they could not meet the students' needs. Wisconsin's open enrollment statute, in fact, allows for denial of transfer requests by special education students due to capacity – specifically the availability of the needed "program or services" in new district. Students with disabilities have [often faced](#) discrimination or denial of services when they have tried to participate in school choice. But the Seventh Circuit panel of judges reasoned that the Wisconsin program denies services based on a district's capacity to serve a given student with a disability (allowed) rather than denying admission by reason of the disability (not allowed).

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This newsletter is made possible in part by support provided by the Great Lakes Center for Education Research and Practice: <http://www.greatlakescenter.org>

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