

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT August 2019

Schools of Hope Deemed Constitutional

On August 29, 2019, the First District Court of Appeal affirmed a final judgment entered in favor of the State Board of Education related to a constitutional challenge to House Bill 7069 brought by several Florida school boards. The school boards challenged certain provisions of the law (including the creation of “Schools of Hope”), asserting that the law violated their right to “operate, control and supervise all free public schools” and other areas of the Florida Constitution.

The three-judge panel affirmed the final judgment entered by Leon County Judge John Cooper, holding that the school boards did not have standing to challenge any of the provisions of the Bill other than the provisions dealing with capital millage and federal Title I funds. The Court also found that the school boards’ challenge to those provisions were “unavailing on the merits.”

Notably, the Court specifically held that “the State’s constitutional duty to make adequate provision for Florida’s public schools must be interpreted to mean that the State has a duty to ensure that charter schools are not neglected by the school boards. By requiring that charter schools receive a certain portion of capital millage funds, the State is not violating article IX, section 4, but is fulfilling the purpose of article IX, section 1.”

The decision may be found here: [Decision](#).

Federal District Court Sides with Transgender Student in Bathroom/Student Records Case

The years-long litigation involving Gavin Grimm and the Gloucester County School Board took another interesting turn on August 9, 2019. Specifically, the Eastern District of Virginia granted summary judgment in favor of Grimm, finding that denying him access to the bathroom matching his gender identity and refusing to change the gender marker on his student records violated Title IX and the Equal Protection Clause. The school board has already filed an appeal with the Fourth Circuit Court of Appeals.

Read more: [wtkr.com](#).

Florida A&M University Prevails in Whistleblower Case

Florida’s First District Court of Appeal has affirmed an administrative decision of the Florida Commission on Human Relations dismissing a pharmacy student’s complaint for failing to allege retaliatory action as required by the Florida Public Whistleblower Act. The student alleged certain professors retaliated against her for complaining about grading policies and the manner in which

she claims to have been treated. The FCHR dismissed her complaint, because she did not allege retaliatory conduct prohibited by the FPWA.

The decision may be found here: [Decision](#).

Ninth Circuit Rules Student-Athletes Are Not Employees

A USC football player's lawsuit against the NCAA and PAC-12 alleging he is an employee for purposes of the Fair Labor Standards Act has been rejected by the Ninth Circuit Court of Appeals. In *Dawson v. NCAA*, Case No.: 17-15973, the court found the "economic realities" of the relationship between Dawson and the NCAA and PAC-12 did not support a finding that an employment relationship had been created and that the NCAA's limitation on the number of scholarships a school is allowed to provide did not create a reasonable expectation of compensation. The court also found that neither the NCAA nor the PAC-12 had the power to hire or fire Dawson and that the revenue generated from collegiate athletics did not create an employment relationship.

The decision may be found here: [Decision](#).

OCR Investigating Connecticut Athletics Association Over Transgender Athletes

This month, it was announced that the United States Department of Education's Office for Civil Rights (OCR) was investigating the Connecticut Association of Schools-Connecticut Interscholastic Athletics Conference after three female students alleged they were discriminated against as a result of having to compete against transgender female track athletes.

Read more: [nbcnews.com](#); [The Washington Post](#).

Southern District of Florida: Student Failed to Exhaust Administrative Remedies (IDEA)

On July 18, 2019, the Southern District of Florida granted the Miami-Dade County School Board's Motion to Dismiss claims brought by a student under Title II of the ADA and Section 504. The claims arose "out of the Board's alleged failure to provide a paraprofessional to assist J.M., who is physically disabled, at Lamar Louise Curry Middle School...". The court ultimately held that since the ADA and Section 504 claims challenged the denial of a free appropriate public education, the student was required to exhaust IDEA administrative remedies before initiating the suit.

The decision may be found here: [Decision](#).

First Circuit Weighs in on Due Process Rights Afforded to University Student's Accused of Assault

On August 6, 2019, the First Circuit Court of Appeals issued an opinion in the matter of *Haidak v. University of Massachusetts-Amherst*. The court held that the University violated Mr. Haidak's right to due process when it suspended him without prior notice or an official hearing following allegations that he had assaulted and harassed his girlfriend. However, the court also found that

the University did not violate Mr. Haidak’s rights when they expelled him “after providing a fair expulsion hearing.”

Mr. Haidak’s main complaint related to the hearing was the University’s policy against students questioning other students directly in student conduct hearings. Instead, Mr. Haidak was required to submit proposed questions to a Hearing Board to consider posing to the witness. University officials pared down the thirty-six questions Mr. Haidak submitted to sixteen. Nonetheless, the Court found that the “inquisitorial model” set forth in University policy and employed in this matter was constitutionally adequate.

This issue is far from decided. This First Circuit’s opinion creates a circuit split that may provide the impetus necessary for the U.S. Supreme Court to decide to hear the issue. Additionally, the U.S. Department of Education is currently working on new Title IX regulations that will address what some perceive to be violations of due process rights for those accused of sexual assault.

The decision may be found here: [Decision](#).

“Would you like a side of fracas with your order?”

[In news from the Lonestar state](#), a Texas school superintendent was suspended for three days following reports that he drunkenly head-butted another superintendent at a San Antonio Whataburger. The superintendents – who were attending a leadership conference – ran into each other at the restaurant, at which time one reportedly made a comment about the other’s clothes, triggering the head-butt. An off-duty police officer saw the ensuing melee, then detained the two men until other police officers responded.

The school board based the suspension on the superintendent’s failure to promptly report the altercation which took place earlier this summer.

Firm News

[Robert J. Sniffen](#) was recently selected by his peers for inclusion in *The Best Lawyers in America*® 2020 Edition in the fields of Employment Law – Management, Labor Law – Management and Litigation – Labor and Employment. Additionally, [Michael P. Spellman](#) was named *The Best Lawyers*™ 2020 Litigation – Labor and Employment “Lawyer of the Year” in Tallahassee.

[Robert J. Sniffen](#) authored “The ADA and Website Accessibility,” which was published in the FSAE Source magazine. The article explores the rash of website accessibility lawsuits filed under Titles II and III of the Americans With Disabilities Act and steps public and private sector entities can take to mitigate their risk.

[Jeff Slanker](#) has been reappointed to serve as the communications chair of the UCF Tallahassee Alumni Club. Jeff is a 2008 graduate of UCF’s business school.

Past Issues of the Education Law Alert Available on Website

You may view past issues of the Education Law Alert on the Firm's website: www.sniffenlaw.com. After entering the Firm's website, click on the "Publications" page. Our Firm also highlights various articles of interest on our official Twitter feed, @Sniffenlaw.