SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT
October 2019

FL DOE to School Boards in Florida: Adopt a Medical Marijuana Policy Now

On October 3, 2019, the Florida Department of Education ("FL DOE") issued a memorandum to school districts in Florida urging them to adopt a policy related to medical marijuana in schools as is required by Section 1006.062(8), Florida Statutes. The memorandum states, *in pertinent part*, as follows:

> The purpose of this memorandum is to remind school districts of this requirement, which has now been codified in law for more than 27 months. Although the area of law is relatively new, ample time has passed for districts to adopt compliant access policies. If your district has adopted a compliant policy, please submit a copy to the Department by October 18, 2019. If your district has not yet adopted a compliant policy, please provide a draft to the Department no later than December 1, 2019, and provide notification of board adoption by December 31, 2019. Failure to comply with this Legislative requirement may result in actions under section 1008.32, Florida Statutes.

The memorandum also attaches examples of policies from Broward, Miami-Date, and Volusia County School Districts but cautions that FL DOE "does not endorse any particular policy."

The memorandum and example policies are available at the following link: FL DOE.

Federal Court in New Mexico Rules Medical Marijuana Not Required for FAPE

On August 8, 2019, a federal court in New Mexico issued what may be a first ruling of its kind. At issue in Albuquerque Pub. Sch. v. Sledge, CV 18-1029 KK/LF, 2019 WL 3755954 (D.N.M. Aug. 8, 2019) was whether a school district was required to permit the administration of medical marijuana in order for a student to receive a free appropriate public education under the Individuals with Disabilities Education Act ("IDEA"). The Court recognized that medical marijuana was legal in New Mexico; however, it also recognized that marijuana is a Schedule I drug and illegal under Federal law. Ultimately, the Court held that it would be "absurd" to require the school district to accommodate the use of medical marijuana under the IDEA, because the IDEA cannot be read to require school districts to commit a federal crime in order to provide FAPE.

A copy of the opinion is available at the following link: Sledge.

Supreme Court Hears Oral Argument in Big Employment Law Cases

In early October, the United States Supreme Court heard oral argument in a trio of high profile cases involving the interpretation of the term "sex" in Title VII of the Civil Rights Act of 1964. The Supreme Court heard oral argument first in the consolidated cases of Bostock v. Clayton County and Altitude Express v. Zarda. Those cases concern whether the term sex in Title VII encompasses a prohibition of discrimination against someone based on their sexual orientation. Next, the Court heard oral argument in R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission which concerns whether the term sex in Title VII encompasses and prohibits discrimination against an individual based on their gender identity. These issues are currently subject to a dispute between federal appellate courts. While many states have enacted laws that make discrimination based on sexual orientation and gender identity illegal under those state laws, Florida lacks such a law. Accordingly, the Supreme Court's decision will have major consequences for employers throughout Florida. Decisions on these cases will likely be released in June of 2020.

The decisions in these cases are further likely to impact the application of Title IX in schools as it relates to transgender students and bathroom, locker rooms, and showering facilities, because many of the prior court opinions on these issues relied on Title VII case law and the interpretation of "sex" under Title VII.

The transcripts and audio for the oral arguments may be found on the Supreme Court's website at the following link: Audio and Oral Argument Information.

Male Student's Title IX Claim Against University Dismissed for Failing to Plead Sufficient Facts Showing an Entitlement to Relief

On October 25, 2019, the Third Circuit Court of Appeals (New Jersey) issued an opinion in Doe v. Princeton University, Case No. 18-1477 (3d Cir., Oct. 25, 2019) upholding a lower court's dismissal of Doe's Title IX, breach of contract, estoppel and reliance, and negligence claims against the University arising from a sexual misconduct investigation. Doe was a former gay male student at the University who alleged that he was sexually assaulted twice by another male student ("Student X") and subjected to a hostile environment. During the pendency of Doe's claims against Student X, Student X filed a cross-complaint against Doe. Ultimately, the University convened a panel that issued a set of charges against both students but determined neither student was responsible for the charges against them.

As set forth in the Opinion (page 3), Doe's complaints against the University included the following:

> Doe alleges that the panel acted improperly by, among other things, meeting with Student X twice before meeting with Doe, not interviewing all of Doe's witnesses, obtaining information about Doe's previous sexual history, and giving Student X the opportunity to "submit new evidence" during the panel's deliberation phase. Compl. ¶ 118.

> During the panel's investigation and deliberation, Princeton "banned" Doe "from attending" the religious community center, Compl. ¶ 110, but declined to provide Doe with a no-contact order against Student X's friends. Doe asserts that he felt isolated, depressed, and attempted suicide. Doe contacted clergy and student services administrators (including panel members) regarding his suicidal behavior. None of these individuals took any action.
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> Doe alleges that the "significant stress and emotional upheaval" from the sexual assault "had a negative impact on [his] grades and academic standing." Compl. ¶ 144. At one point, Doe asked the Graduate School for an extension to take a midterm exam so he had time to submit evidence to the panel before it closed its investigation. Graduate School did not grant the extension request, and his academic advisor provided no help. Princeton, however, offered him a leave of absence.
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> In the final semester of his program, Doe concluded that he would be unable to meet his degree requirements and requested reenrollment for the following semester. Princeton notified Doe that he must maintain a B average in his courses for the spring semester to be eligible to enroll for the fall semester. Doe was unable to maintain a B average, and Princeton terminated his enrollment. Doe alleges that another male student in his program received his degree without completing his final semester.

The Court concluded that Doe failed to plead sufficient facts to demonstrate that he was subjected to disparate treatment on the basis of sex, that the University was "deliberately indifferent to the alleged sexual harassment," or that the University was deliberately indifferent in regards to the "alleged hostile environment 'created' by Student X's friends…".

Importantly, another take away from the opinion is how the Court handled Doe's claim that the University retailed against him by "investigating and adjudicating [Student X's] cross complaint," noting that it was not the University who initiated the charges against Doe.

A copy of the opinion is available at the following link: Doe v. Princeton University.

Georgia School District Reverses Transgender Student Bathroom Procedure

Issues related to bathroom, locker room, and shower facility use by transgender students in K-12 schools continues to be an issue across the Country. This month, after allowing students to use the bathroom corresponding to their gender identity, the Superintendent for Pickens County Schools announced that the school district would reverse its decision to allow such use. The reversal was announced, because the Superintendent relayed that the earlier decision resulted in death threats and safety concerns.

Source: ABCNews.

Graduate Students' Union Rights May Be Abolished by Proposed NLRB Rule

A previous decision from the NLRB in 2016 ruled that private university graduate students were "employees" and therefore entitled to collective bargaining rights. This ruling meant that employers of graduate students had to recognize and bargain with democratically elected unions. On September 23, 2019, the NLRB announced a proposed rule which would in effect reverse the 2016 decision and not treat students who perform services, such as teaching and research for compensation at a private college or university in connection with their studies, as "employees" under the National Labor Relations Act. The proposed regulations would define most graduate students as outside the protections of federal labor laws. This would be the third time in the past 19 years the NLRB changed its stance on this issue. Members of the public are invited to make comments on the proposal for 60 days after its publication.

More information regarding the proposed rule is available at the following link: NLRB.

From the Lighter Side - Court Grounds Cardinals' Attempt to Sue Escort

Katina Powell co-authored a book entitled "Breaking Cardinal Rules: Basketball and the Escort Queen." In it, she claimed that she and her daughters engaged in or agreed to engage in sexual conduct with University of Louisville men's basketball players and recruits from 2010-2014 in exchange for $10,000. After the book's publication, the University self-imposed a postseason ban on its men's basketball program for the 2015-16 season.

Several current and former Louisville students filed suit asserting a variety of claims, including civil conspiracy, a violation of Kentucky's "Son of Sam" law, and tortious interference with a prospective business advantage, in which they contended there was a diminution in the value of their degrees. They also claimed that in public, when wearing Louisville attire, they were approached by strangers who made rude and hateful remarks because of the events chronicled in the book.

The Kentucky Court of Appeals unanimously rejected all Plaintiffs' claims. As an aside, Ms. Powell's fame and fortune were short-lived as she been arrested several times in 2019 for theft-related incidents.

A copy of the Court's Order is available at the following link: Court Order.

Ms. Powell's demise is chronicled here: WDRB.com.

Firm News

Molly L. Shaddock, Esq., has joined Sniffen & Spellman, P.A. Molly is Board Certified by The Florida Bar in Education Law and brings years of experience in handing education law matters to the Firm. We are truly excited to have Molly join the team. Molly will be based out of our office in West Palm Beach, Florida. Sniffen & Spellman, P.A. is now one of only a select few law firms in the State of Florida with more than one attorney Board Certified by The Florida Bar in Education

Law. Terry J. Harmon, Esq. out of our office in Tallahassee, Florida is also Board Certified by The Florida Bar in Education Law.

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.

Jeff Slanker presented at the 45th Annual Public Employment Labor Relations Forum, a CLE program put on by the Florida Bar's Labor and Employment and City, County, and Local Government Sections. Jeff presented an update on the FCHR and the EEOC at the Forum, which took place in Orlando from October 17th - 18th.

Jeff Slanker and Rob Sniffen co-authored "Cyber Security and Data Breach Issues for Associations," published in the September/October issue of Association Source magazine.

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.