

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT August 2020

CDC Releases Updated Return-to-School Guidelines

As students across the State of Florida continue to return to brick-and-mortar schools this month, there is no doubt that school districts, parents, and students are taking extreme precautions related to COVID-19. To further assist schools, the Centers for Disease Control and Prevention (“CDC”) issued updated guidelines on August 26, 2020. The guidelines include important recommendations for school administrators.

Source: [Updated CDC Guidelines](#).

DOL Publishes Guidance Related to the Reopening of Schools

On August 27, 2020, the U.S. Department of Labor’s Wage and Hour Division (“WHD”) and Employment and Training Administration (“ETA”) each issued new guidance pertaining to the reopening of schools. The WHD’s guidance includes FAQs “for workers and employers about qualifying for paid leave under the Families First Coronavirus Response Act (FFCRA).” The ETA guidance “provides states with information regarding the eligibility of individuals who are caregivers for Pandemic Unemployment Assistance (PUA) under the CARES Act.”

Source: [DOL Guidance](#).

Trial Court Abused its Discretion in Vacating Automatic Stay of Temporary Injunction in Challenge to Emergency Order Regarding School Reopening

On August 31, 2020, the First District Court of Appeal entered an Order on Emergency Motion to Reinstate Automatic Stay in pending litigation against Florida Governor Ron DeSantis and others. Previously, the trial court granted Plaintiffs’ motion for a temporary injunction and, despite the filing of an appeal which triggers an automatic stay (since the case involved the state or a public officer), the trial court vacated the automatic stay. Ultimately, the appellate court determined that the trial court abused its discretion in vacating the automatic stay finding, among other things, as follows:

We hold that the circuit court abused its discretion in three respects when it vacated the automatic stay. First, no compelling circumstances warranted vacating the stay. Second, based on our preliminary review, the State has a substantial likelihood of succeeding on the merits in this appeal. And third, Appellees failed to show that reinstatement of the automatic stay would cause irreparable harm.

A copy of the opinion is available at the following link: [Order](#).

Idaho Federal District Court Issues Opinion in Case Challenging Law Prohibiting Males from Participating on Female Sports Teams

The United States District Court for the District of Idaho dismissed a suit through which transgender female students argued that the State's Fairness in Women's Sports Act ("Act") violated the Constitution and Title IX. The Act provides that "[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex." The Act also provided for ways in which a student can bring a dispute regarding their sex, which included having a health care provider verify the student's biological sex. This provision was the crux of the dispute.

The District Court found that Plaintiffs lacked standing and that their claims were not yet ripe. The Plaintiffs brought this claim before the Act went into effect thus their injuries were based on hypothetical, future applications of the law. The Court also dismissed Plaintiffs' claim that the Act can be applied unconstitutionally. The Court relied on Ninth Circuit precedent, Clark ex rel. Clark v. Arizona Interscholastic Association, which held that excluding boys from the girls' team is constitutional.

A copy of the opinion is available at the following link: [Idaho Opinion](#).

United States Department of Education Publishes New Distance Learning Regulations for Postsecondary Institutions

On August 24, 2020, the United States Department of Education ("US DOE") published new regulations "that govern distance learning in higher education and promote educational innovation to better serve the needs of an increasingly diverse population of students." The "Distance Education and Innovation" rule takes effects on July 1, 2021. The new regulations include, among other things, the following (directly quoted from US DOE Press Release):

- Emphasize demonstrated learning over seat time.
- Remove confusion over whether a course is eligible for Title IV aid by defining "regular and substantive" interaction between students and instructors.
- Clarify and simplify the requirements for direct assessment programs, including how to determine equivalent credit hours.
- Add a definition of "juvenile justice facility" to ensure that incarcerated students remain Pell eligible.
- Allow students enrolled in Title IV, Higher Education Act (HEA)-eligible foreign institutions to complete up to 25% of their programs at an eligible institution in the United States. This provision is particularly important for students temporarily unable to attend courses abroad due to the COVID-19 pandemic.
- Encourage employer participation in developing educational programs.
- Create a new, student-centric system for disbursing Title IV, HEA assistance to students in subscription-based programs.
- Require prompt action by the Department on applications to participate, or continue to participate, as an eligible institution in the HEA, Title IV program. In the past, these applications have been stalled for months or even years.

- Allow clock hour programs, which often lead to state licensed occupations, to utilize innovative learning models.

Source: [US DOE Press Release](#).

Justice Department Settles Service Animal Lawsuit with New York School District

On August 20, 2020, the United States Department of Justice (“DOJ”) issued a press release announcing that it had settled a lawsuit with the Gates Chili Central School District in New York. The lawsuit was originally filed by the DOJ under the Americans with Disabilities Act (“ADA”) and alleged as follows (directly quoted from DOJ Press Release):

the school district denied a student with disabilities equal access to school by conditioning her use of a service dog on her parent providing a full-time dog handler, despite the student’s demonstrated ability to control and handle her service dog with minimal assistance and the service dog’s extensive training to serve and respond to the student and follow school routines. Ultimately, the family relocated to another school district where the child could exercise her right to use her service dog without unnecessary and discriminatory conditions. Since their move two years ago, the student has successfully acted as the handler of her service dog in her new school.

As part of the settlement agreement, the school district is required to pay the student’s mother \$42,000.00 and revise its policies related service animals and the ADA.

Source: [Department of Justice Press Release](#).

From the Lighter Side: “Chocolate Snow” Covers Swiss Town After Candy Factory Malfunction

The Swiss town of Olten was covered in a light dusting of chocolate following an equipment malfunction inside the Lindt and Spreunpli chocolate factory. A minor defect in the cooling ventilation area used to roast cocoa nibs resulted in fine cocoa powder being shot skyward where it was spread to nearby areas by strong winds.

The particles are reportedly harmless, and the company has offered to pay for any cleaning that might be required.

Source: [The Guardian](#).

Firm News

[Robert J. Sniffen](#) and [Michel P. Spellman](#) have been selected by their peers as “Lawyer of the Year” in the practice areas of Employment Law – Management (Sniffen) and Labor Law – Management (Spellman) in Tallahassee, Florida. Only a single lawyer in a specific practice area and region is honored with a “Lawyer of the Year” recognition. Mr. Sniffen and Mr. Spellman will

be highlighted in the 27th Edition of *The Best Lawyers in America*© for high caliber work in the practice areas of Employment Law – Management, Labor Law – Management, and Litigation – Labor and Employment.

Past Issues of the Education Law Alert Available on Website

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