

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT September 2020

Supreme Court of Florida Holds Sovereign Immunity Caps Apply to Claims by Multiple Victims of a Single Criminal Event

In two cases released earlier this month, the Supreme Court of Florida held that a mass shooting is a single incident and not individual events under Florida's sovereign immunity law. In Barnett v. State Department of Financial Services (No. SC19-87), the Florida Supreme Court unanimously held that a mass shooting that resulted in the tragic deaths of five people was a single incident or occurrence under Florida law, and the total liability for any negligence claim against a state agency could not exceed the cap set forth in Section 768.28(5), Florida Statutes. Section 768.28(5), Florida Statutes, limits the financial liability of state agencies or subdivisions for claims "arising out of the same incident or occurrence."

In Barnett, plaintiff sued the Florida Department of Children and Families, claiming that the agency failed to protect the victims of the shooting. Plaintiff argued that the shooting of each individual victim should be viewed as a separate event. However, the Court held that the phrase "same incident or occurrence" refers to a criminal event as a whole and not to the distinct crimes against each individual victim. The opinion is available at the following link: [Barnett](#).

Sniffen & Spellman, P.A. attorneys Michael Spellman and Jeff Slanker filed an *amicus brief* in Barnett on behalf of the Florida League of Cities. The *amicus brief* is available at the following link: [Amicus Brief](#).

Separately, in Guttenberg v. School Board of Broward County (No. SC19-487), the Court applied the rationale from Barnett to a case stemming from the tragic Marjory Stoneman Douglas High School shooting in 2018. Ultimately, the Court upheld a lower court decision that an event where a gunman killed 17 people and wounded 17 others is a single incident or occurrence under Florida's sovereign immunity statute. The opinion is available at the following link: [Guttenberg](#).

US DOE Publishes Title IX Q&A

As all education institutions know by now, the United States Department of Education ("US DOE") released new Title IX regulations in May of 2020. On September 4, 2020, the US DOE published a Q&A document regarding the new regulations in an effort to assist education institutions with implementation of the regulations. The Q&A document addresses a number of topics, including the non-retroactivity of the regulations, personnel issues, definitions, formal complaints, investigations, and hearings.

The Q&A document is available at the following link: [US DOE Title IX Q&A](#).

Note: On August 31, 2020, the US DOE also issued a letter of notification regarding the Office for Civil Rights’ (“OCR”) enforcement of Title IX in light of the U.S. Supreme Court’s decision in Bostock v. Clayton County, Georgia. The letter is available at the following link: [US DOE Letter; Letters of Impending Enforcement Action](#).

US DOE Publishes Q&A Regarding COVID-19 and Compliance with Federal Civil Rights Laws

On September 28, 2020, the US DOE issued a Q&A document for K-12 public schools providing guidance on how schools can meet their obligations under Federal civil rights law during the COVID-19 pandemic. The Q&A addresses a number of issues related to the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1972, and the Americans with Disabilities Act (among other laws). Exceptional Student Education (“ESE”) personnel within K-12 schools should review this document.

The Q&A document is available at the following link: [US DOE COVID-19/Civil Rights Q&A](#).

Fourth Circuit Court of Appeals Denies *En Banc* Review in Transgender Student Bathroom Case

On September 22, 2020, in Grimm v. Gloucester County School Board, the Fourth Circuit Court of Appeals denied the school board’s request for an *en banc* review of its earlier decision in favor of Grimm. The case involves the issue of whether the school board’s policy separating bathrooms on the basis of biological sex violates Title IX and the Equal Protection Clause in the U.S. Constitution. Ultimately, no judge within the Fourth Circuit Court of Appeals requested a poll under the Federal Rules of Civil Procedure thereby warranting denial of the school board’s request. Interestingly, one of the dissenting judges (Niemeyer) issued a statement concurring in the denial of the rehearing *en banc* but encouraged the school board to file a petition for certiorari in the Supreme Court “with the hope that the Court will again be interested in granting it.”

A copy of the Court’s opinion denying *en banc* review is available at the following link: [Grimm](#).

Title IX Complaint filed by University of Iowa Women’s Swimming and Diving Team

Four members of the University of Iowa’s (“UI”) Women’s Swimming and Diving Team filed a Title IX complaint regarding UI’s decision to discontinue its women’s swimming and diving program at the end of the 2020-21 academic year. Many Universities are faced with similar issues in light of the economic pains associated with COVID-19.

UI announced on August 11 that men’s tennis, men’s gymnastics and both men’s and women’s swimming and diving would be cut at the end of the 2020-2021 academic year. UI noted that these cuts would save the University \$5 million annually. Initially, UI indicated that these cuts were directly related to a shortfall in revenue from the UI football team. Without the football season, UI projected a \$75 million shortfall in their athletic department budget. The Big Ten Conference announced that an abbreviated football season would commence, and UI revised its projected

shortfall down to \$40-60 million. This revision, however, did not alter the fate of the four programs due to be cut by UI.

Detailed in the complaint is UI's obligation to provide equal opportunity and treatment in athletics with regard to gender as it receives federal funding. "[The University of Iowa] has failed to provide student-athletes with athletic opportunities at a rate that is 'substantially proportionate' to their undergraduate and full time enrollment rate; and it has failed to show that the interests and abilities of the historically underrepresented sex have been fully and effectively accommodated," the plaintiffs wrote. According the complaint, the plaintiffs are seeking immediate declaratory and injunctive relief via the reinstatement of the women's swim and dive program at UI. The plaintiffs are also seeking additional relief, commanding UI to establish more athletic opportunities and programs for women.

The complaint also alleges that UI failed to establish more women's sports programs. Additionally, UI is accused of not making meaningful advancements to provide equal opportunities to women in athletics. Additionally, the complaint argues that women are paid disproportionately in comparison to men. The average men's head coaching salary is \$998,000 and the average women's salary is \$230,000. After the cuts are made at the end of the 2020-21 academic year, UI's athletics department will house eight men's sports and 12 women's sports.

The complaint also accuses UI of stashing "benchwarmers" on its women's teams to improve its gender equity statistics. For instance, in 2014, the women's rowing team housed 89 student-athletes. The average rowing squad size among NCAA Division I programs was 64 at the time. The Hawkeyes' team was nearly 40 percent larger than other average programs throughout the NCAA. The complaint asserts that UI's use of "such masking and distorting practices" show a failure of UI to in providing equal athletics opportunities for men and women. Cutting the four sports will result in the loss of 20.7 men's scholarships compared to 14 female scholarships.

Source: [The Gazette](#).

Third Circuit Court of Appeals Denies Group of Teachers' Claim Under §1983 Based on Contracts Clause

Earlier this month, three Pennsylvania teachers appealed a District Court's decision to dismiss their claim under 42 U.S.C. §1983 against the Scranton School District, alleging it deprived them of rights under the Contracts Clause. According to the teachers, the school district deprived them of rights under the Contracts Clause when it applied a Pennsylvania law, Act 2017-55, to suspend them from employment. The Act amended the Public School Code to authorize the suspension of tenured teachers for economic reasons. The teachers argued that because the Act took effect after the plaintiffs entered into their tenure contracts and now allowed for their suspensions based on economic reasons, it amounted to a substantial impairment of their tenure contract rights. They also argued that their suspensions were not a necessary or reasonable way to address the School District's financial problems.

The District Court dismissed the teachers' claim stating they failed to allege a plausible Contracts Clause violation. The Third Circuit Court of Appeals affirmed the dismissal of the claim.

According to the Third Circuit, the teachers failed to state a §1983 claim premised on the Contracts Clause, because their complaint and its exhibits show that the suspensions were necessary and reasonable measures to advance the significant and legitimate public purpose of combatting the budget shortage.

A copy of the opinion is available at the following link: [Third Circuit Court of Appeals](#).

From the Lighter Side: Customer's Lawsuit Against Best Buy Dismissed

In case you missed it, a federal court in Florida (Ocala) dismissed a lawsuit filed by a Best Buy customer who got into a dispute with an employee over a coupon. The plaintiff was arrested for disorderly conduct. The plaintiff subsequently sued Best Buy, a news organization, and others alleging that an internet advertisement utilizing plaintiff's mugshot and labeling her the "Pantless Couponer" was improper under Florida and Federal law. According to the Court's opinion, there was a dispute as to whether the customer dropped her pants during the ordeal with the Best Buy employee. With respect to Best Buy, the lawsuit was ultimately dismissed.

A copy of the Report and Recommendation issued by United States Magistrate Judge Philip R. Lamens is available at the following link: [Opinion](#).

Firm News

On September 23, 2020, Rob Sniffen and Jeff Slanker presented the webinar "U.S. Supreme Court Update: Title VII and LGTBQ Discrimination – What Florida Employers and Employees Need to Know" to the Florida Bar's Labor and Employment Law Section. The webinar highlighted the recent supreme court case of Bostock v. Clayton County, Georgia, a landmark employment discrimination case issued by the Supreme Court during its last term.

On September 30, 2020, Jeff Slanker presented to the Tallahassee Regional Air Conditioning Contractors Association (TRACCA) about key topics in labor and employment law and how the COVID-19 Pandemic has shaped employment law this year.

Past Issues of the Education Law Alert Available on Website

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