

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT October 2020

Florida Department of Education Publishes Change in Guidance Related to ESE Initial Evaluation Timeline

On October 23, 2020, the Florida Department of Education (“FL DOE”) published a change in guidance memorandum related to initial evaluation timelines for students with disabilities. FL DOE advised, among other things, as follows in the guidance memorandum:

Pursuant to DOE Emergency Order No. 2020-EO-02, for each student for whom an initial evaluation was initiated in Spring 2020 but that the district could not complete within the 60-day timeline due to required face-to-face interaction, districts should document which assessments were administered virtually, which assessments could not be completed virtually, and why a face-to-face assessment was necessary for those not completed virtually. With appropriate individualized documentation, the district may utilize an extension for an initial evaluation for the time the school buildings were closed to students. For example, if school buildings in a district were closed for 50 days as a result of the Governor’s Executive Order 20-52 and DOE Emergency Order No. 2020-EO-01, that district may utilize an additional 50 days to complete the initial evaluation and report the same as timely in the IDEA Indicator 11 Data web-based application for students whose evaluations were delayed because a face to face assessment was required.

FL DOE further cautioned that unilateral extensions of the initial evaluation timelines are not appropriate. Special education personnel should review FL DOE’s memorandum in its entirety.

A copy of the guidance memorandum is available at the following link: [DPS 2020-133](#).

United States Department of Education Issues 2017-2018 Civil Rights Data

On October 15, 2020, the United States Department of Education (“US DOE”) released its much anticipated civil rights data for 2017-2018. According to a US DOE Press Release, the data is “self-reported by 17,604 public school districts and 97,632 public schools and educational programs.” In addition to the publication of the civil rights data, US DOE’s Office for Civil Rights issued two “issue briefs” addressing the use of restraint and seclusion on students with disabilities and sexual violence in K-12 schools. Those briefs can be found [here](#) and [here](#).

The civil rights data can be found at the following link: [US DOE](#)

Lawsuit Filed in Ohio Challenging School District Plan to Resume In-person Instruction

An Ohio parent sued her child's school district earlier this month to block a plan to return students to classrooms despite what she calls a "surge" of COVID-19 cases in the area. The Hudson City School District school board voted to resume in-person education for grades K-8, and continue a hybrid model for high school. Students who fail to attend classes in-person may be subject to truancy laws.

A magistrate judge denied the parent's request for a temporary restraining order, finding no evidence to establish a denial of educational or constitutional rights or to suggest that the school board acted improperly. The court will consider the parent's request for an injunction next month.

Read more [here](#) and [here](#).

Mask-Mandate Lawsuit Filed Against Sarasota County School Board

Several parents of students are suing the Sarasota County School Board over the board's decision to require students to wear masks while in school. The school board recently approved a ninety-day extension of their mask order. The parents allege the policy denies students the right to equal education, based upon the constitutions of the United States and Florida, by forcing students to either subject themselves to a policy antithetical to their best interests or enroll in a separate and unequal distance-learning program. As part of their argument, the parents proffer the idea that constitutional liberties are hard to redress once relinquished and restrictions on these liberties can persist long after the original danger has passed. The lawsuit argues the government must show less restrictive public health efforts haven't worked, and the parents, not the school board, should be deciding whether their children should wear masks.

The school board has cautioned there could be an exodus of teachers if mask-wearing is made optional. A GoFundMe page was set up by the parents with a goal of \$11,000 to cover the costs of litigation, and it has already surpassed the goal.

More information can be found [here](#).

ESE Student Not Required to Exhaust Discrimination and Harassment Claims under the IDEA

A former high school student sued the Eugene (Oregon) School District in federal court for discrimination based on her disabilities in violation of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. The district court dismissed the former student's complaint for failing to exhaust the administrative remedies under the Individuals with Disabilities Education Act ("IDEA"). The student appealed the district court's order to the 9th Circuit.

The 9th Circuit applied *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017) and held the former student was not required to exhaust administrative remedies under IDEA. The court found the crux of the former student's complaint sought relief for discrimination and harassment, not for denial of a free appropriate public education ("FAPE"). In support of this position, the court stated the former student was alleging the school district failed to provide her with specific

accommodations, which was not a denial of FAPE under IDEA, and the former student never sought or received “special education and related services,” so a hostile learning environment could not have interfered with such services. The court reversed the district court’s dismissal and remanded for further consideration.

The case can be found [here](#).

From the Lighter Side: DIY “Get Out of Jail Free” Card Almost Works for New Hampshire Woman

A New Hampshire woman facing charges for drug possession and stalking filed fake documents with the court declaring that the charges against her had been dropped. Pretending to be a prosecutor, the woman filed documents with the court’s electronic system in three different court cases. Her scheme was foiled when a state forensic examiner who had been scheduled to perform a competency evaluation on the woman asked prosecutors if the examination should proceed. The woman now faces six counts of falsifying physical evidence and one count of false personation.

More information can be found at [this](#) link.

Firm News

[Rob Sniffen](#), [Jeff Slanker](#), and [Elmer Ignacio](#) were part of a litigation team that successfully argued to Florida’s First District Court of Appeal that claims against the state under the Uniformed Services Employment and Reemployment Rights Act and Florida’s Florida Uniformed Servicemembers’ Protection Act were barred by sovereign immunity. The issue was one of first impression in the state. The case is styled *State of Florida, Department of Highway Safety and Motor Vehicles v. James Hightower*. A copy of the opinion can be found [here](#).

[Rob Sniffen](#), [Michael Spellman](#), [Mark Logan](#), and [Frank Lynch](#) have been recognized by Martindale-Hubbell with an AV preeminent rating. The AV rating means that the lawyer has been rated by his or her peers and recognized for the highest level of professional excellence. An attorney with an “AV” rating means that the attorney has reached the highest of professional excellence and is recognized for the highest levels of skill and integrity.

[Jeff Slanker](#) presented earlier this month at the Annual Conference of the Florida Association of Self-Insureds in Naples, Florida. Jeff presented on two topics to the group of Florida Self-Insureds. One topic concerned the impact of social media in the workplace. The other presentation provided an update on legislative, judicial, and administrative developments in labor and employment law over the past year.

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