

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT November 2020

Professor's First Amendment Retaliation Claim Fails Before the Eleventh Circuit

The Eleventh Circuit Court of Appeals recently rejected an appeal from a fired Florida Atlantic University professor who claimed his termination was in retaliation for exercising his First Amendment rights. The professor was fired after publishing on his blog that he believed the Sandy Hook Elementary School shooting was a hoax. University officials maintained that the firing was because of multiple incidents of insubordination by Plaintiff. A jury ruled in the University's favor following a nine-day trial, and the appellate court upheld that decision.

The Eleventh Circuit's opinion is available [here](#).

Federal District Court Rules in Favor of School District in IDEA Case

On November 23, 2020, the United States District Court, N.D. Alabama, entered judgment in favor of the Jefferson County Board of Education in an appeal of a due process decision filed by a student. T.T. v. Jefferson County Board of Education, Case No. 2:19-cv-1965-GMB (N.D. Ala. 2020). Importantly, while the student was able to demonstrate that the school district committed a procedural violation of the Individuals with Disabilities Education Act ("IDEA") by not evaluating him for a speech-related disability, the District Court ultimately ruled in favor of the school district, because the student failed to provide evidence that he suffered without speech or language therapy. The school district also committed a procedural violation of the IDEA as a result of its failure to assess the student's behavioral needs. However, the student was again unable to provide any evidence that his behavior disrupted the classroom environment. The District Court also found in favor of the school district with respect to several IEP-related arguments raised by the student.

The opinion is available at the following link: [T.T.](#)

Seventh Circuit Upholds Summary Judgment Finding No "Male-Bias" at University

In a Title IX sex discrimination case, the Seventh Circuit Court of Appeals granted defendant Marian University's ("University") Motion for Summary Judgment. Trevor Johnson ("Johnson"), a male student, drank heavily alongside a female student while attending a college party. That same night, Johnson and the female student had sexual intercourse. When the female student woke up the next morning, she could not recall having a sexual encounter with Johnson. A full year later, she officially accused Johnson of taking advantage of her in a state of "blackout" inebriation.

In response to that accusation, the University then assigned the Dean of Students ("Dean") to conduct an internal Title IX investigation. Johnson was deemed responsible for an assault on the female student and suspended for two years. Johnson filed suit in federal court, claiming he was

discriminated against by the University because he is a male. The District Court granted summary judgment in favor of the University, and Johnson appealed.

On appeal, Johnson argued that the University had a pervasive “pro-feminist” and “anti-male” culture. Due to this culture, Johnson alleged he was never allowed a full and fair investigation and thus his suspension was unwarranted and illegal. Johnson pointed out that the Dean made note of the fact that, if the events occurred the way the female student alleged, it would be a violation of University policy. Johnson argued that this was proof of an investigation which had reached its factual conclusion without any input from Johnson.

Johnson also argued that the Dean’s investigation was unfair and biased, because the Dean had an active social media presence during the confirmation hearings of now Justice Brett Kavanaugh on which he publicly applauded the parties coming forward to accuse Justice Kavanaugh of sexual assault.

The Seventh Circuit disagreed with Johnson’s arguments and found no bias on the part of the University. Further, the Court noted that the Dean appeared to conduct a thorough investigation of the facts, and Johnson could only make broad allegations against the “anti-male” culture at the University.

A copy of the opinions is available [here](#).

School Sued over “Jesus Loves Me” Mask

Parents of a student are suing the Simpson County School District in Mississippi after school officials told their 9-year-old daughter she could not wear a mask with the phrase “Jesus Loves Me” on it at school. The lawsuit alleges the school district discriminated against the student for expressing her sincerely held religious beliefs. The parents of the student are seeking declaratory relief and are asking the court to declare the school district’s policy of banning “political, religious, sexual or inappropriate statements” on masks unconstitutional. The parents are also seeking nominal damages and attorneys’ fees.

This is not the first lawsuit to be filed over a school’s mask policy. Earlier this month, a judge in Connecticut denied a request for an emergency order to block the state’s mandate for students to wear masks in schools. Additionally, last month, a Michigan private school filed a lawsuit challenging the state’s mandate that students wear masks in classrooms.

To read more about these cases, click [here](#).

Court Dismisses Parent’s Lawsuit Regarding “Pro-Transgender” School Policies

In 2018, the Williamston Community Schools Board of Education (“Board”) in Michigan adopted a policy adding sexual orientation and gender identity to a list of protected categories in its anti-bullying and equal opportunity policies. Additionally, the Board passed a series of policies that allowed students to be referred to “by names and pronouns consistent with” their gender identity and offered alternatives to gender-based bathrooms or locker rooms if they felt uncomfortable.

Claiming that their religious beliefs were being violated, a group of parents protested the Board's new policies and filed a lawsuit in federal court. The lawsuit claimed that the policies sought to "silence and punish" plaintiffs' "sincerely held religious beliefs and viewpoint" and violated their freedom of religion and expression under the First Amendment. The parents also alleged that the new policies forced their children to affirm "alternative sexual lifestyles" or be punished for non-compliance.

Ultimately, the U.S. District Court for the Western District of Michigan dismissed the lawsuit, because the parents failed to name a specific injury that students suffered as a result of the newly-enacted policies.

A copy of the opinion is available at the following link: [Reynolds v. Talberg, et. al. \(W.D. Michigan, 2020\)](#).

Parents Appeal to Federal Circuit Court in Challenge to Ban Book from School

A North Carolina judge recently ruled that the Lake Norman Charter School can continue to use "The Poet X" by Elizabeth Acevedo as part of their curriculum. Parents of a 9th grader filed a federal lawsuit seeking to have the book removed from the student's classroom, claiming the book had an anti-Christian message and its use violated the First Amendment. A federal judge disagreed, ruling the parents did not present sufficient evidence to prevent the school from teaching the book. The parents have appealed the decision.

More information is available [here](#).

Parents Sue Colorado School District Alleging Transgender Lesson Infringes Religious Freedom

Christian parents are suing the Boulder Valley School District in federal court alleging the school district violated their right to religious freedom by subjecting their children to lessons on transgender issues. The parents sought to have their children exempted from a planned presentation on transgender issues at a K-5 school, which included a musical performance by the Colorado Trans Community Choir, videos on gender roles from a YouTube channel titled "Queer Kids Stuff," and a post-presentation classroom discussion. The parents allege they were allowed to have their kids opt-out of the musical performance but not the videos or classroom discussion. They also allege retaliation by the school district in the form of a hostile environment being created after the parents filed a formal complaint in November of 2018. They contend that teachers at school were heard maligning the families who supported the complaint.

The lawsuit seeks, in part, to have the school district pay expenses for alternate schooling.

More information is available [here](#).

Florida Department of Education Outlines Recent DJJ Education Program Rules

On November 20, 2020, the Florida Department of Education sent a Memorandum to all Superintendents outlining recent changes to Department of Juvenile Justice (DJJ) Education Program Rules. The Memorandum is available at the following link: [FL DOE Memorandum](#).

From the Lighter Side: Man Cooks a Pizza During Alleged Burglary

Sometimes a good pizza is just too difficult to pass up. This month, a man allegedly broke into a pizzeria in California and stopped to make himself a pizza. The man allegedly also made off with cash, electronics, and other items. A video of the alleged burglar making pizza is available at the following link: [Insider.com](#)

Source: [NBC12.com](#).

Firm News

Sniffen & Spellman Secures Defense Verdict for Employer After Six-Day Jury Trial in Federal Court - Attorneys **Elmer Ignacio** and **Dawn Whitehurst** and paralegal **Karen Barger**, along with Department of Corrections General Counsel Lance Neff, secured a defense verdict for the Department of Corrections against an African-American/Baptist employee who claimed race and religious discrimination. The verdict was announced on November 24, 2020, following a six-day jury trial in the U.S. District Court for the Northern District of Florida. Represented by two law firms which included a nationally prominent civil rights attorney, the employee alleged the Department discriminated against him on the basis of race and religion by not selecting him for promotion. Our attorneys argued and the jury determined the Department had legitimate non-discriminatory reasons for selecting another candidate for promotion.

On November 4, 2020, **Terry J. Harmon** presented “Child Find Issues in Florida” and served as a panelist at the Education Law Association’s 66th Annual Conference.

Sniffen & Spellman, P.A. proudly sponsored the Goodwill Classic Golf Tournament to fundraise and support their mission of providing job training and placement services to people in the community with significant barriers to employers.

Sniffen & Spellman sponsored the Deck the Halls event for the Tallahassee Senior Center. As part of the fundraising event, Michael Spellman co-hosted the Deck-tinis and More virtual martini making class on November 19, 2020.

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.