

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT December 2020

United States Supreme Court Denies Petition for a Writ of Certiorari in Transgender Student Bathroom Case

On December 7, 2020, the United States Supreme Court denied a Petition for a Writ of Certiorari in Parents for Privacy, et al. v. William P. Barr, Attorney General, et al., Case No. 20-62. The questions presented by Parents for Privacy, et al. included the following:

1. Whether parents surrender their fundamental right to direct the upbringing of their children by enrolling them in public school so that a school district can compel children to disregard biological reality by requiring that they expose their bodies to classmates of the opposite sex and affirm that a child is the sex with which he or she self-identifies.
2. Whether schoolchildren's rights to bodily privacy are violated when they are compelled to undress and engage in intimate bodily functions in the presence of members of the opposite sex who self-identify as something other than their sex while using privacy facilities.
3. Whether a school district can compel children to violate sincerely held religious beliefs that sex is based on biological reality by being forced to affirm that members of one biological sex are members of the opposite sex if they self-identify as that sex.
4. Whether a school district violates Title IX when it compels children to accept into sex-separate privacy facilities members of the opposite sex who self-identify as something other than their sex and to affirm that students are members of whatever sex with which they self-identify.

The Petition was filed after Petitioners were unsuccessful before the Ninth Circuit Court of Appeals in their attempt to strike down the Dallas School District No. 2's policy permitting students to use the bathroom matching their gender identity.

For more information, please visit the following link: [Docket](#).

Fifth Circuit Finds in Favor of School District in FAPE/Compensatory Education Case

On December 14, 2020, the Fifth Circuit Court of Appeals in P.P. v. Northwest Indep. Sch. Dist., No. 20-10197 (5th Cir. Dec. 14, 2020), issued an opinion in a case under the Individuals with Disabilities Education Act (“IDEA”). The appeal was filed after the District Court concluded “that (1) Northwest violated its child find duty from March to October 2016; (2) Northwest violated its FAPE duty during the 2016-17 academic year; (3) Northwest satisfied its FAPE duty during the 2017-18 academic year; and (4) Plaintiffs failed to establish entitlement to compensatory education.”

Ultimately, the Court determined that the school district provided the student with FAPE during the 2016-2017 and 2017-2018 school years. Interestingly, although the parties failed to challenge the District Court’s order as it pertains to the Child Find violation, Plaintiff challenged the denial of compensatory education for the Child Find violation. The Court affirmed the District Court’s denial of compensatory education, finding that despite the Child Find violation, Plaintiff made progress. The Court also reasoned that Plaintiff’s parents rejected remedial services offered by the school district and “stymied” the school district’s “efforts to correct deficiencies in P.P.’s initial IEPs by refusing to meet with the ARD Committee while the IEE was pending and refusing to adopt agreed-upon revisions in the proposed May 2017 IEP.”

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

Miguel Cardona Selected as Secretary of Education

On December 22, 2020, President-elect Joe Biden announced that he was selecting Miguel Cardona to serve as the Secretary of Education at the start of his presidency. Cardona received his Bachelor of Science in Education from the University of Central Connecticut in 1997 and his Doctor of Education in 2011 from the University of Connecticut. Noted for his skill and talent as an educator, Cardona started his career teaching 4th Grade at Israel Putnam Elementary School in Meriden, Connecticut, and quickly rose through the ranks. He became the youngest principal in Connecticut at the age of 28 in 2003. Cardona continued to advance his career with Meriden Public Schools and from 2015 to 2019 served as its Assistant Superintendent. In August of 2019, Connecticut Governor Ned Lamont selected Cardona to be the Commissioner of Education.

Of note, during the COVID-19 pandemic, Cardona promoted a return to in-person teaching, citing numerous social and emotional benefits that could not be replicated with virtual learning along with the inherent difficulties of a truly virtual learning environment.

To read more about Cardona, please refer [here](#).

Anthony Sabatini Proposes Amendment to Limit School Board Member Terms

On November 30, 2020, Anthony Sabatini, Representative for Florida’s 32nd District, proposed House Joint Resolution 11 (HJR 11), a proposal which would amend Article XII of the Florida Constitution and limit the terms of School Board members to eight consecutive years. This measure is virtually identical to House Joint Resolution 157 from the 2020 legislative session, a

measure which passed with overwhelming support in Florida's House of Representatives, but was not voted on by the Senate prior to the 2020 legislative session adjourning on March 13, 2020.

In order to be enacted, HJR 11 must be passed by both Florida's House of Representatives and Senate, after which it will be placed on the ballot for the next general election. More than 60 percent of voters must endorse the proposed Amendment in order for it to become law. To read more about the proposed Amendment, please refer [here](#).

Cheerleader's Vulgar Message Sparks First Amendment Lawsuit

After having a rough week that included not being selected for her high school's Varsity Cheerleading team, a Pennsylvania student shared a message on her Snapchat account. The message included some vulgarities and raised a certain finger to "softball," "cheer," and "everything." While Snapchats are meant to disappear after a certain amount of time, a fellow student took a screenshot of the message and showed it to her mother, a school employee. The school subsequently suspended the student from cheerleading activities for a year, stating that it was necessary to "avoid chaos" and maintain a "team-like environment." The student sued the school district and was victorious in the Third Circuit Court of Appeals. In deciding the case, the Third Circuit found that the First Amendment did not allow public schools to punish students for speech made off school grounds.

In the coming weeks, the Supreme Court will decide whether to hear the case, possibly providing new precedent that could impact school districts across the country. The current precedent emanates from 1969, when the Supreme Court found in Tinker v. Des Moines Independent Community School District that *disruptive* speech, at least on school grounds, could be punished. The Third Circuit's opinion seemed to limit a public school's ability to punish a student for posting any disturbing language on their social media pages, but a possible Supreme Court review of the issue could create a clearer picture as to what constitutes "off campus speech" in an era where so much of life is online.

Source: [New York Times](#).

Gender Equity Groups Urge President-Elect Biden to Rescind Title IX Rules

More than 100 gender equity and civil rights organizations have signed a letter urging President-Elect Biden to stop enforcement and rescind new regulations put in place by outgoing Secretary of Education Betsy DeVos.

The letter states that Biden's Department of Education should start working on new regulations under Title IX and "promptly" issue interim guidance to return to Obama-era standards for how colleges respond to sexual misconduct. Also, the letter asks the Biden administration to create a White House task force for sexual harassment in schools, fill gender equity positions in both the White House and Department of Education, and conduct a "listening tour" with students and survivors of sexual assault to evaluate how the Trump administration's Title IX regulations have impacted them.

In addition to these demands, the letter also asks the administration to double the amount of federal funding to the Office for Civil Rights, support key congressional legislation to combat sexual harassment in schools, improve the Department of Education's collection of data on sex discrimination on campuses, and address the recent Supreme Court decision that protects LGBTQ individuals from employment discrimination by issuing new Title IX regulations that offer similar protections for LGBTQ students on campuses.

Source: [Insidehighered.com](https://www.insidehighered.com)

From the Lighter Side: Pajama Suits – Bringing New Meaning to “Business Casual”

The COVID-19 pandemic has led to an increase in the number of employees working from home which, in turn, has led to an increase in the number of employees working in their pajamas. For some employees, the only thing that could force them to change into regular clothes would be a video conference with coworkers or clients – until now.

Japanese fashion company AOKI has designed the “Pajama Suit” – comfortable sleepwear that looks like a business suit. Now, for some employees, there is one less step between waking up and getting to work.

More information can be found [here](#). (For those willing to pay international shipping, the “Pajama Suit” can be ordered from [AOKI's website](#).)

Firm News

Terry J. Harmon will be presenting “Navigating Child Find Red Flags” at LRP's Special Education Attorneys Conference on February 5, 2021. The three-day virtual conference runs from February 3-5, 2021. More information is available at the following link: [LRP](#).

Jeff Slanker presented to the Sunrise Rotary of Tallahassee earlier this month. Jeff presented a retrospective of the major employment law issues of the past year.

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.