

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT September 2021

Eleventh Circuit Denies Parent's Request for Compensatory Education and Attorney's Fees Despite Child Find Violation under the IDEA

Compensatory education is designed to counteract educational setbacks a child encounters because of substantive violations of the Individuals with Disabilities in Education Act ("IDEA"). In J.N. v. Jefferson County Board of Education, Case No. 19-14847 (11th Cir., September 10, 2021), Plaintiff's grades dropped significantly during middle school, and she began exhibiting several behavioral issues. During her eighth grade year, Plaintiff's mother met with her math teacher and asked whether the school had developed an IEP. Plaintiff's school then engaged a "problem-solving team" and, two months later, Plaintiff was referred for an evaluation under the IDEA.

Plaintiff's mother brought suit alleging the school violated the IDEA by not identifying her child earlier for IDEA eligibility. On appeal, the Eleventh Circuit held that even though the school violated its Child Find requirements under the IDEA, Plaintiff was not entitled to compensatory education for the procedural violation. Moreover, even though Plaintiff established the school committed a procedural violation, the Court held that Plaintiff's failure to establish a substantive violation warranted the denial of her request for prevailing party attorney's fees.

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

Eleventh Circuit Affirms Order Dismissing Title IX Discrimination and Retaliation Claims

In Whitaker v. Board of Regents of University System of Georgia, Case No. 20-13618 (11th Cir., Sept. 14, 2021), the Eleventh Circuit examined whether Plaintiff's Third Amended Complaint appropriately stated a cause of action for alleged violations of Title IX. Fairly summarized, Plaintiff asserted Title IX sex-discrimination claims under three separate theories: (1) deliberate indifference; (2) selective enforcement; and, (3) erroneous outcome. In affirming the dismissal of Plaintiff's Complaint, the Eleventh Circuit held, among other things, that Plaintiff was found "not responsible" through the University's disciplinary proceedings and, therefore, he was unable to demonstrate that he "was wrongfully found to have committed an offense."

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

U.S. DOE Awards Project SAFE Funds to Florida School District Following State-Imposed Penalty for Implementing COVID-19 Safety Measures

On September 23, 2021, the U.S. Department of Education awarded the School Board of Alachua County, Florida, a total of \$147,719 in funding under the new Project to Support America's Families and Educators (Project SAFE) grant program. This is the first award under Project SAFE.

The Project SAFE program was announced as part of President Biden’s COVID-19 Action Plan to combat COVID-19 and safely reopen schools for in-person learning. As part of the program, school districts may apply to US DOE to restore funding withheld by state leaders—such as salaries for school board members or superintendents who have had their pay cut—when a school district implemented strategies to help prevent the spread of COVID-19 in schools.

More information is available at the following link: [US DOE](#).

Disabled Students Failed to Exhaust Administrative Remedies in Challenge to Governor DeSantis’ Executive Order

On July 30, 2021, Governor DeSantis issued Executive Order 21-175 (“Ensuring Parents’ Freedom to Choose - Masks in School”). A group of students, by way of their parents, brought suit and filed for a preliminary injunction to have the Court immediately enjoin enforcement of Governor DeSantis’ Executive Order and allow school districts to implement students’ IEPs and Section 504 plans. Hayes v. DeSantis, Case No. 1:21-cv-22863-KMM (S.D. Fla., Sept. 15, 2021). Fairly summarized, Plaintiffs argued that the Executive Order prohibited school districts from adopting policies requiring students to wear masks in schools. Plaintiffs argued that this violated rights afforded to the students under the Americans with Disabilities Act, as amended.

The United States District Court for the Southern District of Florida denied the request for a preliminary injunction on the grounds that the Plaintiffs did not exhaust their administrative remedies as required by the IDEA. Plaintiffs contended that the exhaustion of these remedies would be futile due to their belief that there was no jurisdiction or authority for an administrative law judge to render an order on mask mandates. The Court disagreed that exhaustion of Plaintiffs’ claims would be futile or inadequate. Furthermore, the Court found that the students would be “substantially benefited” from administrative remedies, primarily due to the authority of the ALJ to provide tailored solutions to each child’s individual needs.

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

Pennsylvania Federal Court Holds that Plaintiff Failed to Allege Factual Basis for Title IX Violation

In Humphries v. Pennsylvania State University, Case No. 4:20-CV-00064 (M.D. Penn., Sept. 24, 2021), a Pennsylvania federal court considered whether to grant the University’s Motion to Dismiss Plaintiff’s Fourth Amended Complaint for failing to state a claim under Title IX. In the Court’s Order granting the University’s Motion to Dismiss, the Court held that Plaintiff failed to detail a timeline of events and to plainly state whether he alleged direct or indirect evidence of causation. The Court noted that “[a] Title IX plaintiff may demonstrate causation in three ways: (1) by way of temporal proximity between the adverse action and the protected activity, (2) by showing a pattern of animus after the protected activity; or (3) by other circumstantial evidence concerning the school’s motivation, including inconsistent reasons given by the school or its treatment of others.” Doe v. Manor Coll., 479 F. Supp. 3d 151, 172 (E.D. Pa. 2020) (citing Atkinson v. Lafayette Coll., 653 F. Supp. 2d 581 (E.D. Pa. 2009)). Due to Plaintiff’s failure to effectively allege causation, the case was dismissed with prejudice.

Florida's Minimum Wage to Increase Effective September 30, 2021

Florida's minimum wage will increase to \$10.00 per hour effective September 30, 2021. The increase is consistent with the constitutional amendment approved by Florida voters last November, which will eventually see the minimum wage rise to \$15.00 by 2026. The tip credit towards the minimum wage for tipped employees of \$3.02 is still in effect.

From the Lighter Side: Financial Advice from Mr. Goxx – A Hamster!

Whose returns beat Warren Buffet's and the S&P 500? Mr. Goxx's. He is a hamster that has been trading cryptocurrencies since June. He does this by running on a hamster wheel that selects dozens of cryptocurrencies. Then depending on which of two tunnels he decides to go into, a decision is made whether to buy or sell. His portfolio is up 20 percent since he started trading. Not bad.

More [here](#).

Firm News

[Rob Sniffen](#) will present "Navigating the Process of Employment Claims" to Big Bend SHRM on October 7, 2021. For more information or to register, go to [BigBendSHRM.org](#).

[Elmer Ignacio](#) gave a series of presentations in Labor & Employment Law on September 25, 2021, for the Florida Veterinary Medical Association's "Power of 10" annual leadership program in Orlando, Florida.

Kristen C. Diot has written an article about an 11th Circuit decision that, unlike the Americans with Disabilities Act, the Florida Civil Rights Act doesn't include "any protection against discrimination to persons associated with an individual with a disability": <https://www.hrlaws.com/node/1275166>.

Sniffen & Spellman, P.A. donated \$3,000 for the kick off of the NFC foundation \$500 Scholarship for the *Supplemental Recertification Review Courses for State Certification Examination*. This course is designed for officers who were previously certified in the State of Florida or another state(s), or the military who wish to be certified in Florida. This certification is not covered under any other financial aid, so the NFC Foundation Scholarship Committee graciously agreed to scholarship \$500 to these students.

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.