

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT
December 2021/January 2022

Federal Court in Florida Denies Preliminary Injunction Challenging School Board Public Participation Policy

Decorum at public school board meetings has become a topic of interest across the United States in recent months. On January 24, 2022, the United States District Court for the Middle District of Florida in Moms for Liberty – Brevard County, FL, et al. v. Brevard Public Schools, et al., Case No. 6:21-cv-1849-RBD-GJK denied Plaintiffs’ Motion for Preliminary Injunction. In Moms for Liberty, plaintiffs alleged that the Board adopted an unconstitutionally restrictive and vague policy related to public participation at school board meetings. Specifically, plaintiffs challenged those portions of the policy that required all statements at school board meetings be directed to the Board Chair and that the Board Chair may “interrupt, warn, or terminate a participant’s statement when the statement is too lengthy, personally directed, abusive, obscene, or irrelevant” and “request any individual to leave the meeting when that person does not observe reasonable decorum.”

In denying plaintiffs’ request for a preliminary injunction, the Court found that the policy on its face was “both content- and viewpoint-neutral.” As such, the Court found that plaintiffs were unlikely to succeed on their facial challenge. The Court also denied to enter an injunction with respect to plaintiffs’ as-applied challenge to the policy.

A copy of the opinion is not yet publicly available online.

En Banc Oral Argument Date Set in Eleventh Circuit Transgender Student Bathroom Case

On February 22, 2022, the Eleventh Circuit Court of Appeals (*en banc*) will hear oral argument in Adams v. School Board of St. Johns County, Florida (Case No. 18-13592). At issue in Adams is whether the School Board’s policy requiring students to use the bathroom matching their biological sex is permitted under the United States Constitution and Title IX. Sniffen & Spellman, P.A.’s Jeffrey D. Slanker and Terry J. Harmon continue to serve as lead counsel to the School Board in Adams.

Supreme Court Speaks on COVID Vaccine Mandates

As reported in our recent special alert, the Supreme Court has stayed the implementation of OSHA’s vaccine or test mandate for employers with 100 or more employees. Since that report, and shortly after the Supreme Court’s decision, OSHA formally withdrew the mandate. Importantly, OSHA indicated it intended to implement the mandate through its rulemaking power, a more formal process than the emergency standard it initially attempted to use to implement the mandate. While there is no current enforceable federal mandate, it is important for employers with

over 100 employees to stay up to date with OSHA standards and subsequent legal challenges to best protect themselves from fines or other penalties as this matter continues to evolve.

Also as reported in our special alert, the Supreme Court did not stay the implementation of the Center for Medicare and Medicaid Services (“CMS”) mandate requiring all employees of healthcare providers enrolled in Medicare or Medicaid programs to receive the COVID-19 vaccination. Covered employers should pay attention to CMS deadlines and guidelines as failure to comply could result in monetary fines and possibly termination from Medicare and Medicaid programs.

The Supreme Court has not addressed the vaccine mandate regarding federal contractors, which remains halted nationwide after a federal judge in Georgia issued a stay in [*State of Georgia v. Biden*](#). Employers who are parties to federal contracts still need to be aware of changes though, as a stay could be lifted by a reviewing court. It is important to note that employees of a company which contracts with the federal government and is also enrolled in Medicare or Medicaid would still be covered by the CMS mandate.

Proposed Florida Legislation Expands Duty of School Board Related to Student Welfare

A Florida House Bill that would expand the duties of Florida’s school boards as it relates to student welfare continues to move forward. The key provisions of House Bill 1557 (Parent Rights in Education) require the following of school boards:

[...]adopt procedures for notifying a student's parent if there is a change in the student's services or monitoring related to the student's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment for the student. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage a student to discuss issues relating to his or her well-being with his or her parent or to seek permission to discuss or facilitate discussion of the issue with the parent. The procedures must comply with s. 1002.22(2) and may not prohibit a parent from accessing any of his or her minor child's education records created, maintained, or used by the school district. This paragraph does not limit or alter any obligation of school district personnel to report suspected abuse, abandonment, or neglect, as those terms are defined in s. 39.01.

A school district may not adopt procedures or student support forms that prohibit school district personnel from notifying a parent about his or her student's mental, emotional, or physical health or well-being, or a change in related services or monitoring, or that encourage or have the effect of encouraging a student to withhold from a parent such information. School district personnel may not discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. This subparagraph does not prohibit a school district from adopting procedures that permit school personnel to withhold such information from a parent if a reasonably

prudent person would believe that disclosure would result in abuse, abandonment, or neglect, as those terms are defined in s. 39.01.

A school district may not encourage classroom discussion about sexual orientation or gender identity in primary grade levels or in a manner that is not age-appropriate or developmentally appropriate for students.

A parent of a student may bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates this paragraph and seek injunctive relief. A court may award damages and shall award reasonable attorney fees and court costs to a parent who receives declaratory or injunctive relief.

Student support services training developed or provided by a school district to school district personnel must adhere to student services guidelines, standards, and frameworks established by the Department of Education.

More information is available at the following link: [HB 1557](#).

Compulsory Attendance Age May Raise in Florida

The current compulsory attendance age in Florida is 16. However, proposed legislation (HB 125) in Florida would increase the age to 18. If the bill passes, students aged 18 or over would not be required to obtain a parental signature when filing a formal declaration of intent to terminate school enrollment.

More information is available at the following link: [HB 125](#).

Florida May Require Social Media Instruction for Students

Florida students may soon be required to receive required instruction in social media literacy. Senate Bill 480 (Required Instruction in Public Schools) requires that the following instruction be provided by members of the instructional staff of public schools:

(u) Social media literacy. For purposes of this paragraph, “social media” means a form of interactive electronic communication through an Internet website or application by which a user creates a service-specific identifying user profile to connect with other users of the Internet website or application for the purpose of communicating and sharing information, ideas, news, stories, opinions, images, and other content. District school boards shall make social media literacy instructional material available online and notify parents of the material’s online availability.

More information is available at the following link: [SB 408](#).

From the Lighter Side: Battle over Drug Kingpin's Hippos Brewing

The infamous Pablo Escobar maintained something of a zoo on his former estate in Colombia. There were numerous animals on his former estate and part of this zoo including zebras, giraffes, and oddly enough to South America, hippos. These hippos were appropriately dubbed "cocaine-hippos." While not native to Colombia, these cocaine-hippos are thriving. The population started with just four and has since exploded. This presents some interesting clashes with the local environment with a debate stirring up about whether the hippos are an invasive species, or actually good for the local environment.

Read more about this story [here](#).

Firm News

Sniffen & Spellman, P.A. is pleased to announce that **Elmer C. Ignacio** has become a Shareholder. Elmer focuses his practice in all areas of labor and employment law. He is an experienced litigator and has been lead defense counsel in both state and federal jury trials and administrative hearings. Elmer also counsels employers and management in matters ranging from state and federal labor and employment laws, compliance, and handbook review and drafting. Elmer has published numerous articles and presented programs on various labor and employment law topics. Elmer received his bachelor's degree in psychology from the University of Florida and his law degree from the Florida State University College of Law. Though originally born in the Philippines, Elmer is a long-time Tallahassee resident and enjoys tennis and fishing.

Robert Sniffen, Michael Spellman, Lisa Fountain, 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. Additionally, **John Eubanks, Jr.** and **Dawn Whitehurst** were given a "Distinguished" rating from their peers. AV[®], AV Preeminent[®], Martindale-Hubbell DistinguishedSM and Martindale-Hubbell NotableSM are Certification Marks used under license in accordance with the Martindale-Hubbell[®] certification procedures, standards and policies.

Frank Lynch made the President's Circle for 2021 by the Attorneys' Title Fund Services, LLC ("The Fund"). Each year, The Fund reviews and analyzes the highest premium producing Fund Members for the prior year. Only The Fund's top Member firms received this distinction. For more information on The Fund, please read [here](#).

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.