

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT February 2022

En Banc Oral Argument Held in Eleventh Circuit Transgender Student Bathroom Case

On February 22, 2022, the Eleventh Circuit Court of Appeals (*en banc*) heard 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. A copy of the oral argument is available at the following link: [Oral Argument](#).

We will issue a Special Alert as soon as a decision is rendered by the Court.

Eleventh Circuit Rejects Qualified Immunity Defense for School Personnel who Conducted Strip Search of a Student

Qualified immunity is a defense commonly raised by governmental employees sued in their individual capacities. The defense protects employees so "long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." In T.R. v. Lamar County Bd. of Ed., et al. (Case No. 21-12424), among other claims, T.R. alleged she was subjected to two strip searches by school personnel who were investigating whether she possessed marijuana. School official successfully argued that qualified immunity served as a complete defense to the claims.

On appeal, the Eleventh Circuit reversed the District Court's decision for a number of reasons. For example, the Court held that T.R.'s right to not be subjected to a strip search was clearly established at the time of the searches. The Court further reasoned as follows:

...we conclude that the district court erred in distinguishing this case from Safford by reasoning that there was a specific suspicion that T.R. was hiding drugs under her clothing because no drugs were found in her belongings. This is not a specific suspicion, but rather a "general background possibilit[y]," which is insufficient to justify a strip search of a student by a school official

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

Proposed Florida Legislation Expanding Duty of School Board Related to Student Welfare Continues through the Florida House

A Florida House Bill (HB 1557) that would expand the duties of Florida's school boards as it relates to student welfare shows no signs of slowing down as session continues. All Florida school board personnel should continue to monitor the legislation as it greatly impacts the day-

to-day duties of personnel related to student welfare. This bill has also drawn significant national attention.

The latest version of the bill is available at the following link: [HB 1557 – Engrossed 1](#).

Proposed Florida Legislation Impacts FCS Institutions

Senate Bill 7044 was introduced on February 3, 2022. The proposed bill addresses a number of FCS operational issues, including the following (quoted directly from [Florida Senate website](#)):

Providing requirements for lists of required and recommended textbooks and instructional materials for Florida College System institution and state university courses; revising the maintenance requirements of and information that must be included in the statewide course numbering system; prohibiting public postsecondary education institutions from being accredited by the same agency or association for consecutive accreditation cycles; requiring Florida College System institutions and state universities, respectively, to post specified information relating to tuition and fee rates and proposed changes to such rates on their websites, etc.

More information is available at the following link: [SB 7044](#).

Summary Judgment Granted in Favor of University in Title IX Suit by Male Coach of Women’s Golf Team

On February 10, 2022, the United States District Court for the Middle District of Alabama entered summary judgment in favor of Alabama State University in a lawsuit brought by the former head coach (a male) of the women’s golf team. *Grandison v. Alabama State Univ.*, 2:20-CV-483-WKW, 2022 WL 418689, at *1 (M.D. Ala. Feb. 10, 2022). Plaintiff, Gary Grandison, had his contract non-renewed despite having won seven conference championships and coach of the year five times over the course of a decade. Grandison brought suit under Title IX alleging he was discriminated against on the basis of sex when the University non-renewed his contract and previously paid him less than coaches of the University’s men’s teams. Grandison also brought a state law breach of contract claim.

With respect to his Title IX claim, the Court ultimately granted summary judgment in favor of the University, finding that Grandison “has not demonstrated a prima facie case of discrimination or shown that ASU's legitimate, nondiscriminatory reasons for its employment decisions were pretext for discrimination.” Those legitimate, nondiscriminatory reasons were stated in the opinion as follows:

- (1) his contract was expiring on its own terms;
- (2) an investigation revealed “some merit” as to the players’ and parents’ complaints of misconduct by Plaintiff; and

- (3) Plaintiff disobeyed a directive not to return to practice after he was accused of having an altercation with a student athlete on the golf course.

The University also prevailed on Grandison's disparate pay claim. The Court declined to exercise supplemental jurisdiction regarding Grandison's state law breach of contract claim.

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

US DOE Secretary Issues Statement on Revised CDC Guidance

On February 25, 2022, in response to the most-recent [CDC guidance](#), U.S. Department of Education Secretary Miguel Cardona issued the following statement:

Ninety-nine percent of schools are safely open for in-person learning and that is a testament to the hard work and partnership of school communities – particularly parents, educators, district leaders and school staff. With today's announcement of updated CDC guidance, we can continue to keep schools safely open while allowing for educators and parents to get back to focusing on what is most important: our students' futures. Moving forward, districts should continue to work with local health experts, parents, and educators to identify what works best for their communities and consider the appropriate mitigation strategies needed to keep students and staff safe. This work – in addition to the critical work of helping students catch up academically and providing emotional and mental health supports– can and should be done using American Rescue Plan funds. As we move forward into a new phase of recovery, the Department remains committed to our school communities and providing the guidance and resources they need to be successful.

Source: [U.S. DOE](#).

From the Lighter Side: Valentine's Day 2023 Idea!

Finding a Valentine's Day present for a loved one can truly be a difficult task. This year, the Bronx Zoo offered the public an opportunity to buy...well...a unique gift. For only \$15, you could have named a Madagascar hissing cockroach after your Valentine. Although Valentine's Day 2022 has come and gone, you may want to tuck this article away for next year.

More information is available at the following link: [Bronx Zoo](#).

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