

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT September/October 2022

Federal Court Dismisses Suit Challenging Florida H.B. 1557




On October 20, 2022, the Federal District Court for the Middle District of Florida issued an order dismissing a challenge to Florida House Bill 1557. The Plaintiffs, Florida parents on behalf of themselves and their children who attend Florida public schools and Centerlink, Inc., filed suit in late July against the School Boards of Orange, Indian River, Duval, and Palm Beach Counties, alleging that the School Boards' implementation of HB 1557 within public schools violated the Plaintiffs' First, Fifth, and Fourteenth Amendment rights to free speech, due process, and equal protection.

In an order granting the Defendants' Motions to Dismiss, the Court concluded that the Complaint was a "shot gun" pleading that failed to distinguish which claims had been brought against which Defendants and that the Complaint failed to state a cause of action, because the Plaintiffs failed to allege a policy, custom, or practice of the School Boards which violated the constitution. The Court additionally concluded that the Plaintiffs had failed to establish standing as to each of the Defendants. The case is not closed, however, as the Court granted the Plaintiffs one opportunity to amend the Complaint to correct the noted deficiencies.










A copy of the Order Dismissing the Complaint can be viewed [here](#).

Numerous New Florida Department of Education Regulations Take Effect November 22 and 23, 2022

As education professionals in Florida are aware, the Florida Department of Education has been very active with rulemaking over the last few months. Importantly, several of the new rules are set to take effect on November 22 and 23, 2022. The new rules are as follows:

Notice / Adopted	Section	Description	Publish Date
	Final 6A-1.004	School District Budget Requirements	Effective: 11/23/2022
	Final 6A-1.094124	Required Instruction Planning and Reporting	Effective: 11/23/2022
	Final 6A-10.0451	Tuition and Fee Waivers for Disabled Veterans	Effective: 11/23/2022

	Final 6A-14.064	College Credit Dual Enrollment	Effective: 11/23/2022
	Final 6A-20.028	Florida Bright Futures Scholarship Program.	Effective: 11/23/2022
	Final 6A-20.0282	Dual Enrollment Scholarship Program	Effective: 11/23/2022
	Final 6A-20.0284	Florida Law Enforcement Academy Scholarship Program	Effective: 11/23/2022
	Final 6A-20.0285	Florida Law Enforcement Reimbursement Program	Effective: 11/23/2022
	Final 6A-3.003	Certification as to Specifications of School Buses	Effective: 11/23/2022
	Final 6A-3.0121	Responsibility of School District and Parents or Guardians for Students Who Are Transported at Public Expense	Effective: 11/23/2022
	Final 6A-4.0021	Florida Teacher Certification Examinations	Effective: 11/23/2022
	Final 6A-4.00821	Florida Educational Leadership Examination	Effective: 11/23/2022
	Final 6A-6.0575	Clock Hour Dual Enrollment for School and District Accountability	Effective: 11/23/2022
	Final 6A-1.0014	Comprehensive Management Information System	Effective: 11/22/2022
	Final 6A-1.0018	School Safety Requirements and Monitoring	Effective: 11/22/2022
	Final 6A-1.0071	Fiscal Reporting Dates	Effective: 11/22/2022
	Final 6A-1.094120	Youth Mental Health Awareness Training and Reporting	Effective: 11/22/2022
	Final 6A-1.09433	Voluntary Prekindergarten Pre- and Post-Assessments (Repealed)	Effective: 11/22/2022
	Final 6A-1.0955	Education Records	Effective: 11/22/2022
	Final 6A-10.081	Principles of Professional Conduct for the Education Profession in Florida	Effective: 11/22/2022

	Final 6A-10.086	School Board and Charter School Governing Board Policies or Procedures for Parental Notification Regarding Designation of Bathrooms, Locker Rooms, and Dressing Rooms	Effective: 11/22/2022
	Final 6A-4.0010	Youth Suicide Awareness and Prevention	Effective: 11/22/2022
	Final 6A-5.065	The Florida Educator Accomplished Practices	Effective: 11/22/2022
	Final 6A-5.069	School District Professional Learning Systems	Effective: 11/22/2022
	Final 6A-5.080	The Florida Educational Leadership Standards	Effective: 11/22/2022
	Final 6A-6.0786	Forms for Charter School Applicants and Sponsors	Effective: 11/22/2022
	Final 6A-6.0787	Ballot Process for Teacher and Parent Voting for Charter School Conversion Status.	Effective: 11/22/2022
	Final 6A-6.0791	Special Magistrate for Unresolved Student Welfare Complaints at Charter Schools	Effective: 11/22/2022
	Final 6A-7.0710	Instructional Materials Evaluation Procedures	Effective: 11/22/2022
	Final 6A-7.0713	Elementary School Website Listing of Library Materials and Reading Lists	Effective: 11/22/2022
	Final 6M-4.740	Program Assessment Requirements for the School Readiness Program	Effective: 11/22/2022

Students File Suit Challenging Oklahoma Bathroom Bill

In September 2022, the American Civil Liberties Union, Lambda Legal, and Covington & Burlington, L.P., filed suit on behalf of three Oklahoma transgender students, challenging Oklahoma’s Senate Bill 615. The bill requires students to use the bathroom which corresponds to their sex assigned at birth. The Bill penalizes public school districts up to five percent of their annual state aid if they adopt policies allowing students to use the bathroom of the sex with which they currently identify. The suit, which is brought against numerous state officials, including the Oklahoma State Department of Education, the Oklahoma Attorney General, and four school districts, alleges that the law violates Title IX and the Fourteenth Amendment’s Equal Protection Clause. The case remains pending in the Federal District Court for the Western District of Oklahoma.

A copy of the Complaint can be viewed [here](#).

Comment Period Closes for Title IX Proposed Regulations

On September 12, 2022, the comment period closed for the U.S. Department of Education's proposed Title IX rule amendments. Among other things, the proposed regulations would expand the scope of prohibited sex discrimination by including discrimination based on sex stereotypes, sex characteristics, pregnancy and related conditions, gender identity, sexual orientation, and sexual harassment. The proposed regulations also permit, but no longer require, that live hearings be conducted in cases involving postsecondary students.

All 200,000+ comments are available for review [here](#).

Kansas School District Pays \$95,000 to Settle Teacher Lawsuit Alleging School Policy Relating to Transgender Students Violated Teacher's Religious Beliefs

In September, 2022, the Geary County School District settled a suit brought in the Federal District Court for the District of Kansas by a middle-school teacher, which challenged the District's "Preferred Names and Pronouns Policy" and "Communications with Parents Policy" arguing that the imposition of both policies violated the teacher's free speech, free exercise of religion, and due process rights. Prior to filing suit, the teacher had been disciplined for referring to a student by the pronouns which corresponded with the student's sex assigned at birth, rather than by the student's preferred pronouns. The District's "Preferred Names and Pronouns Policy" required that district staff refer to students by their preferred name and pronouns. Correspondingly, the "Communications with Parents Policy" prohibited District staff from sharing a student's preferred name and pronoun with the student's parent unless the student requested that the administration or school counselor do so. Prior to settlement, the Court granted the teacher's request for a preliminary injunction, concluding that the "Communications with Parents Policy" burdened the teacher's exercise of religion because the teacher, a devout Christian, would be required to be "dishonest or deceitful" when communicating with students' parents.

A copy of the Court's Order granting the Preliminary Injunction can be found [here](#) and a news article relating to the settlement can be found [here](#).

U.S. Supreme Court Denies University's Application For Stay of Order Requiring University To Treat LGBTQ Student Group Similarly To Other Student Groups

On September 14, 2022, the U.S. Supreme Court denied Yeshiva University's request for an emergency stay pending the University's appeal of an order from the New York trial court, which required the University to treat an LGBTQ student group similarly to other student groups in its club recognition process. Specifically, a student group at Yeshiva University—the largest Jewish undergraduate university in the U.S.—the YU Pride Alliance, applied for recognition as an official student group at the University. The University denied the group's application, concluding that recognizing the group would be inconsistent with Torah.

In denying the University's application for a stay, the Court reasoned that the University had at least two other available avenues for relief through the New York state courts. The Court additionally held, however, that should the University seek and be denied relief through the state court system then it could file a renewed motion for stay with the Court. Justice Alito, joined by Justices Thomas, Gorsuch, and Barrett, dissented from the Court's Order, arguing that because the New York state court order likely violated the University's First Amendment Rights there was no need to require the University to first seek relief in the state courts.

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

Federal Court Grants School Board's Motion for Summary Judgment in Suit Alleging School Board Failed to Properly Train School Personnel in Sexual Abuse Prevention

The Plaintiff, K.L., was sexually assaulted by an athletic volunteer in a school restroom during school hours. Thereafter, K.L. brought suit against the Fayette County Board of Education, in the Federal District Court for the Northern District of Alabama, alleging that the Board failed to properly train school personnel in sexual abuse prevention. The Board filed a Motion for Summary Judgment, emphasizing the Board's limited liability for failure to train allegations under *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 691 (1978). The District Court agreed, concluding that the Board could not be held liable for the acts of the athletic volunteer, because the conduct was not so obvious that the need for additional training would have been apparent and the Board did not otherwise have notice of the need for additional training.

A copy of the Court's Order is available [here](#).

From the Lighter Side: A Simply Resolution to an Tight Election!

After all ballots were counted in an election for a city council seat in Rogers City, Michigan, the two candidates vying for a seat were a tie (616-616). After the deadlock was declared, the two candidates resolved the tie the old-fashioned way – they each drew a piece of paper from a bowl. One piece of paper stated, "Elected." The other stated, "Not Elected." To see the election drama (or lack thereof) unfold on video, please follow the link below.

Source: TheAlpenaNews.com

Firm News

Rob Sniffen co-presented "Post-*Dobbs* Employer Considerations" to insurance industry representatives and attorneys at the Execusummit EPLI Conference in Uncasville, Connecticut. The presentation focused on challenges to employers following the U.S. Supreme Court's decision overturning *Roe v. Wade*.

Ryan Dyson recently participated in an intense, week-long course put on by The Division of Administrative Hearings, which was intended to simulate real administrative hearings and teach litigation skills at DOHA's Tallahassee headquarters.

We would like to congratulate Christie Petruzzelli, former law clerk, and now attorney, of the Firm, on being admitted to the Florida Bar.

Rob Sniffen and [Amy Pitsch](#) co-presented “Florida Sunshine Law/Ethics Update,” at the 48th Annual Public Employment Labor Relations Forum in Orlando, Florida.

Rob Sniffen presented “Regulatory and Statutory Update for Florida School Boards” at the Florida School Boards Insurance Trust Fall meeting in St. Augustine, Florida.

Sniffen & Spellman, P.A. was named a Tier 1 firm in Tallahassee for Employment Law – Management, Labor Law – Management, and Litigation – Labor & Employment by *U.S. News – Best Lawyers*[®] “Best Law Firms” in 2023. The Firm was also named a Tier 2 firm in the area of Personal Injury Litigation – Defendants.

Sniffen & Spellman, P.A. is proud to have four lawyers recognized by Best Lawyers[®] in 2023 in America:

- Robert J. Sniffen and Michael P. Spellman for Employment Law – Management, Labor Law – Management, and Litigation – Labor and Employment
- [Dawn P. Whitehurst](#) for Personal Injury Litigation – Defendants
- [Matthew A. Smith](#) for Litigation - Insurance

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.