

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT August 2023

Courts Interpret *Cummings* to Apply to Title IX

Plaintiff, Nashwa Abdulsalam, brought action against the Board of Regents of the University of Nebraska and the University of Nebraska Medical Center, alleging that one of her co-fellows verbally harassed her during her first year in the cardiology fellowship program, and after reporting the harassment, she experienced retaliatory conduct and continued harassment. Plaintiff moved for compensatory damages that would “fairly and justly compensate her for her damages” along with attorney’s fees and costs.

Defendants moved for judgment on the pleadings, arguing in part that Plaintiff’s claims for damages relating to emotional distress cannot survive because such damages are unavailable under Title IX, based on the Supreme Court’s recent decision in *Cummings v. Premier Rehab Keller, P.L.L.C.*, which held that emotional distress damages are not recoverable under the Spending Clause antidiscrimination statutes.

The United States District Court for the District of Nebraska analyzed the *Cummings* decision, pointing out that since *Cummings* was decided, a number of federal courts have applied its logic to Title IX cases where plaintiffs have sought damages for emotional distress. From these decisions, the District Court for the District of Nebraska found a majority rule has emerged: Title IX claims for non-contractual damages (including emotional distress and reputational harm damages) are no longer valid.

The Court reasoned that Title IX was adopted pursuant to Congress’s authority under the Spending Clause and is thus controlled by *Cummings*. As such, Plaintiff’s claims for emotional damages under Title IX were not recoverable.

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

United States District Court for Middle District of Florida Dismisses Lawsuit Challenging HB 1557

On August 16, the District Court for the Middle District Court of Florida issued an Order dismissing a lawsuit against the State Board of Education and several school boards regarding House Bill 1557. Our Firm was proud to have represented the Indian River County School Board in the litigation.

In 2022, HB 1557 was passed in Florida and took effect July 1, 2022. Among other things, HB 1557 prohibited classroom instruction by school personnel or third parties on sexual orientation or gender identity for students in kindergarten through third grade. The new law also requires school boards to adopt procedures for parental notification of a change in a student’s services involving the student’s mental, physical, or emotional health and bars school boards from

implementing any procedures which would prohibit school district personnel from providing said notification.

A group of parents with children that attended Orange and Indian River County Schools, along with the nonprofit group CenterLink, Inc., brought suit, alleging First and Fourteenth Amendment violations. Specifically, Plaintiffs alleged that the school boards' implementation or contemplated implementation of the new law would make certain materials and activities unavailable, chill their speech, and make the schools unable to respond to bullying.

The School Board Defendants moved to dismiss the claim for lack of standing and the failure to state a claim.

The Court found that the majority of the Plaintiffs lacked standing. As to the claims which the Court found standing existed, the Court found the Plaintiffs failed to state a claim under Section 1983.

The claims against the State Board of Education were dismissed because Plaintiffs were never granted leave to add additional parties.

The Court also found that there was no indication that Plaintiffs would be able to cure the deficiencies if given additional opportunities to do so. Accordingly, the Complaint was dismissed.

Florida Court Affirms Dismissal of COVID Shutdown Lawsuit

Florida's Sixth District Court of Appeal affirmed the dismissal of a suit alleging that the University of Central Florida (UCF) should be required to refund money to students because of campus shutdown during the COVID-19 pandemic which caused students to take classes remotely. Plaintiff, Sara Goldstein, argued that UCF breached contracts with students by not providing on-campus services that were paid for by student fees. Goldstein also brought a claim for unjust enrichment. The trial court granted UCF's motion to dismiss on the grounds of sovereign immunity.

On appeal, the Court emphasized that the waiver of sovereign immunity for contract claims pertains only to suits on express, written contracts. The Court found that the Complaint did not incorporate any contracts or documents that provided express terms requiring UCF to provide in-person services for student fees. Accordingly, the Court found that the situation did not fall into the breach of contract exception to sovereign immunity.

Our Firm was proud to serve as amicus counsel on behalf of the State of Florida Public Universities and Colleges.

Find the opinion [here](#).

From the Lighter Side - Whistleblower Tells Congress the U.S. Government Has Secret U.F.O. Program

David Grusch, a former Air Force intelligence officer testified before a congressional committee that the U.S. government has the remnants of a crashed U.F.O. and the corpses of its non-human pilots. Mr. Grusch said that he had interviewed 40 witnesses over four years, and had been informed of multi-decade government programs to retrieve and reverse engineer U.F.O.s. Mr. Grusch also claims that there exists substantive evidence that criminal activity took place to conceal the programs, and that several people have been killed to keep them secret.

Members of congress have called for wider access to U.F.O. records, including those related to government possession of “technologies of unknown origin.” NASA and the Department of Defense refuted Mr. Grusch’s claims.

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