

SNIFFEN & SPELLMAN, P.A.

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Florida Fourth District Court of Appeal Weighs in on Arbitrator Authority in Resolving Dispute Between School Board and Applicant

Gregory Smith, a member of the teachers' union, filed a grievance subject to the union's collective bargaining agreement. Under the agreement, union employees and the School Board of Broward County agreed to submit unresolved grievances to arbitration and that such decisions would be final and binding. The agreement mandated that "[i]f more education support professionals apply than there are positions, attendance and reliability and seniority in the District, shall be the criteria considered by the principal in awarding the promotion."

Smith was not selected for multiple teaching positions that he applied for, and he filed a grievance challenging the decisions, arguing the Board did not consider his seniority during the hiring process. The arbitrator found the Board had violated the agreement by not considering Smith's seniority during the hiring process and that the appropriate remedy was to appoint Smith to the position and grant him backpay.

The Board moved to vacate the award, arguing the remedy exceeded the scope of the arbitrator's authority under the agreement, and the arbitrator was only vested the authority to determine whether the Board made the appropriate considerations during the hiring process. The trial court denied the motion, and the appeal followed.

The appellate Court found that the arbitrator had exceeded his authority in ordering a remedy, where the arbitrator's authority was limited to directing the Board to reconsider Smith's application in light of the appropriate factors. Further, the Court found the arbitrator, in addressing the breach of the agreement, awarded the position to Smith and that such power was vested in the principal—not the arbitrator.

Find the opinion [here](#).

Eleventh Circuit Rules University Board has 11th Amendment Immunity from False Claims Act Suits

The False Claims Act ("FCA"), 31 U.S.C. §§ 3729-3733, is a federal statute which provides that a person who knowingly submits or causes another to submit false claims to the government is liable to the United States for damages. The Act contains an anti-retaliation provision which prohibits government employers from retaliatory behavior against employees who report, investigate, or otherwise deter the violating employer from defrauding the United States government.

Plaintiff worked as a program director at a state university. After her termination, she filed claims under the Georgia Whistleblower Act and the FCA's anti-retaliation provision. Plaintiff alleged the university misallocated and mismanaged funds noncompliant with federal standards. She further alleged she was fired because she reported the alleged improprieties.

The university's board of regents filed a motion to dismiss based on Eleventh Amendment immunity, arguing that Congress did not unequivocally abrogate immunity of the states from suits brought under the provision of the FCA. The district court granted the board's motion.

Plaintiff filed an appeal which led to the Eleventh Circuit deciding the issue. Finding that the FCA did not contain any "unmistakably clear" abrogation of state sovereign immunity, the Court affirmed the district court's ruling.

Find the opinion [here](#).

Florida Fourth District Court of Appeal Clarifies Exhaustion of Administrative Remedies Under the Florida Public Whistle-blower's Act

The School Board of Palm Beach County petitioned for certiorari review from the denial of its motion for summary judgment which argued that the Plaintiff failed to exhaust administrative remedies before bringing her action under Florida's Whistle-blower's Act. § 112.3187(8)(b), *Florida Statutes*. The District Court of Appeal for the Fourth District of Florida granted the petition.

The Court found that § 112.3187(8)(b), *Florida Statutes*, mandates mandatory pre-suit administrative exhaustion, and like the case of *School Board of Hillsborough County v. Woodford*, 270 So. 3d 481, 485 (Fla. 2d DCA 2019), the School Board of Palm Beach County had a contract with the Division of Administrative Hearings. The School Board's policy required an employee alleging a violation of the Whistle-blower's Act to lodge a complaint with the Inspector General, who would then investigate and present the findings to the superintendent. The policy permitted an employee who disagreed with the superintendent's decision to file an action under Chapter 120, *Florida Statutes*, (the Administrative Procedure Act).

Plaintiff's grievance was not brought pursuant to the School Board's policy, nor did Plaintiff request an administrative hearing. The Court found Plaintiff's filing of a generalized grievance did not satisfy the exhaustion requirement of the statute and thus, the trial court's order denying summary judgment was quashed and the court was directed to enter summary judgment in the School Board's favor.

Find the opinion [here](#).

Florida House Bill 1291 Removes "Identity Politics" from Teacher Preparation Programs

On Wednesday, March 6, the Florida Senate gave final approval to House Bill 1291, nearly a week after the House passed the measure. The bill heads next to the Governor for his signature.

Under the bill, teacher preparation programs at colleges and universities would be barred from teaching "identity politics" or include lessons that are "based on theories that systemic racism, sexism, oppression, and privilege are inherent in the institutions of the United States and were created to maintain social, political, and economic inequities."

A House analysis of the measure said that there are 57 "initial" teacher preparation programs in Florida at 10 state universities, 19 state colleges and 28 private colleges and universities. The bill would also apply to preparation programs for prospective school leaders.

The bill has not yet been signed by Governor Ron DeSantis.

A copy of Florida HB 1291 can be viewed [here](#).

Florida House Bill 1285 Places Restrictions on Book Challenges by Non-School District Parents

On Tuesday, March 5, the Florida Senate gave final approval to House Bill 1285. The bill was passed by the House on Thursday, February 15. The bill heads next to the Governor for his signature.

The education bill includes many provisions but perhaps most notable is the provision that seeks to limit school library book objections from individuals who do not have children in those schools. The bill states that a "resident of the county who is not the parent or guardian of a student with access to school district materials may not object to more than one material per month."

The House passed a version of the bill in February that sought to assess a \$100 "processing" fee for each unsuccessful book objection made by a person who already had unsuccessfully challenged five materials in a school district where they do not have children enrolled. The Senate, however, changed the bill to limit people without children in the school district to one challenge per month.

Also of note, the bill prohibits colleges and universities from forbidding students from working while they are pursuing a degree in order to be admitted or remained enrolled in school.

The bill has not yet been signed by Governor Ron DeSantis.

A copy of Florida HB 1285 can be viewed [here](#).

Florida Senate Aims to "Deregulate" Public Schools

The Florida Legislature has passed Senate Bills 7002 and 7004 which have the goal of "deregulating" public schools.

Senate Bill 7002, among other things, would:

- authorize the district school board to delegate the authority to establish a process for the review and approval of district-wide policies and procedures to the superintendent;

- provide flexibility to district school boards in satisfying their statutory duties to provide public notices for meetings and adopt budgets;
- repeal certain reporting requirements, including the school district guidance report, school district report of the reduction of relocatable use, economic security report, school district educational plant survey, and the Florida College System employment equity accountability report;
- reduce financial reporting requirements for school districts not identified as having a financial concern;
- provide clarity for district school boards and teachers' unions regarding district school board duties that may not be precluded by collective bargaining;
- require the State Board of Education (SBE) to develop strategies for addressing teacher shortages and make recommendations for the retention of exceptional student education teachers;
- permit a district school to use advanced degrees for salary adjustments in certain scenarios; and
- make certain changes related to using and improving school facilities.

Find the text of the bill [here](#).

Senate Bill 7004, among other things, would:

- provide school districts with additional time to review state-adopted instructional materials and flexibility to determine the adequate number of instructional materials in each classroom;
- require VPK students with a substantial deficiency in early literacy or mathematics to be referred to additional instruction prior to attending kindergarten;
- allow a student over the age of 16 who has filed a declaration of intent to terminate enrollment to take the GED absent an extraordinary exemption;
- remove certain requirements for the Department of Juvenile Justice (DJJ) prevention, residential, or day treatment programs;
- remove the requirement for a school district to offer a virtual instruction option;
- authorize a school district virtual program to provide equipment and access necessary for participation, regardless of family income;
- remove the requirement that virtual school programs be nonsectarian in its admissions and operations;
- remove the requirement for the SBE to establish the tuition and out-of-state fees for developmental education and associate degree credit; and
- remove the requirement for the SBE to identify performance metrics for the Florida College System (FCS) and develop a plan that specifies goals and objectives for each FCS institution.

Find the text of the bill [here](#).

State of Florida Settles Suit Related to the Parental Rights in Education Act

A law prohibiting classroom instruction on sexual orientation and gender identity in early grades (2022 HB 1557), remains in effect after a settlement was reached in a case before the 11th Circuit United States Court of Appeals. The joint motion for voluntary dismissal comes along with a settlement with an explanation as to the scope and meaning of Section 1001.42(8)(c)3, *Florida Statutes*. Specifically, the term “classroom instruction” is defined as the action, practice, or profession of teaching which takes place in a classroom setting. A library book, for example, without more, is not “classroom instruction.” The motion clarifies that the law prohibits *instruction* on sexual orientation or identity, not mere discussion of it. The statute permits teachers to respond to students who discuss their identities or family life. Additionally, incidental references in literature to a gay or transgender person would not qualify as “instruction” on such topics. The motion also points out that the law is neutral to the extent that it prohibits instruction on sexual orientation and gender identity generally, accordingly, instruction on heterosexuality and cisgender identity would likewise be prohibited.

Firm News

On February 23, 2024 [Mitchell Herring](#) presented to employees of Gadsden County on Public Records Requests and the Sunshine Law.

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