SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT
November 2015

Federal Court in Florida Rules that Pregnancy-Based Discrimination is Actionable Under Title IX

On November 12, 2015, in Conley v. Northwest Florida State College, the United States District Court for the Northern District of Florida held that "Title IX's prohibition of discrimination 'on the basis of sex' encompasses pregnancy-based discrimination." Conley involved a student in the College's paramedic program who became pregnant. She alleged that after becoming pregnant, the College engaged in a number of acts that constituted pregnancy-based discrimination and, as a result, brought an action under Title IX. The College sought to dismiss Plaintiff's claim, contending that pregnancy-based discrimination is not actionable under Title IX.

Ultimately, the Court agreed with Plaintiff and permitted her claim to move forward. In its lengthy reasoning, the Court stated, "[a]lthough it is true that Congress has never amended Title IX's definition of sex to explicitly include pregnancy, the Court is not persuaded that this fact signals Congress's intent on the matter."

The opinion is not currently available online. Please feel free to contact our office for a copy. The full case citation is as follows: Conley v. Northwest Florida State College, 314CV00628MCREMT, 2015 WL 7180504 (N.D. Fla. Nov. 12 2015).

The IDEA Turns 40

The Individuals with Disabilities Education Act ("IDEA") is a federal statute providing that all students with disabilities in public schools receive, among other things, a free appropriate public education. This month marks 40 years since the IDEA was signed into law by President Gerald Ford. According to a release from the U.S. Department of Education ("US DOE"), there are currently over 6.9 million students with disabilities receiving special education and related services. US DOE also announced that it has launched a new website providing additional IDEA-related resources (http://ccrs.osepideasthatwork.org/).

Source:US DOE.

1DCA Rules in Favor of High-Performing Charter School in Action Against FL DOE

This month, the First District Court of Appeal in Department of Education v. Educational Charter Foundation of Florida resolved a statutory interpretation dispute (F.S. 1002.331) between the Florida Department of Education ("FL DOE") and a charter school. In the case, a high-performing charter school received a "C" school grade once during its first 3 years. As a result,

FL DOE sought to declassify the charter school as a high-performing charter school, arguing that it had to earn an "A" or "B" school grade in each of its first 3 years. The charter school argued that Florida law requires that it earn a "C" school grade or lower in any 2 years to lose its high-performing designation.

The trial court entered summary judgment in favor of the charter school, and the First District affirmed the trial court's decision.

Source: Opinion.

The Eleventh Circuit Rules on First Amendment Government Speech

Prior to serving as a math tutor in Palm Beach County, Plaintiff David Mech worked as a porn star, performing in hundreds of pornographic films. He now owns Dave Pounder Productions LLC, a pornography production company and "The Happy/Fun Math Tutor," a tutoring service. The Happy/Fun Math Tutor and Dave Pounder Productions share a mailing address in Boca Raton. Mech, wanting to take advantage of the Pam Beach County School Board's 2008 pilot program allowing schools to hang banners on their property recognizing the sponsors of school programs, inquired about displaying a banner for The happy/Fun Math Tutor at three Palm Beach County schools. Mech's banners hung at the schools without issue from 2011 until 2013, when the schools removed the banners after parents discovered the link between Dave Pounder Productions and The Happy/Fun Math Tutor and complained. Mech sued the School Board for violations of his First and Fourteenth Amendment rights and for breach of contract. The district court rejected Mech's Fourteenth Amendment claims, declined to exercise supplemental jurisdiction over his breach of contract claim, and granted the School Board's motion for summary judgment on the First Amendment claim, finding that the schools did not abridge the First Amendment because they removed the banners due to the common ownership of Mech's companies, not the content of the banners.

On November 23, 2015, the Eleventh Circuit issued an opinion affirming the district court's entry of summary judgment for the School Board on Mech's First Amendment claim, but on grounds separate and apart from those of the district court.

The Eleventh Circuit's discussion focused on whether The Happy/Fun Math Tutor's banners were, as Mech argued, private speech in a limited public forum – in which case the School Board would be prohibited from engaging in viewpoint discrimination under the First Amendment – or government speech – in which case the First Amendment would not apply. The Court relied on the recently decided Walker v. Texas Division, Sons of Confederate Veterans, Inc., _ U.S. _, 135 S.Ct. 2239 (2015) and Pleasant Grove City, Utah v. Summum, 555 U.S. 460, 129 S.Ct. 1125 (2009) to determine when speech qualifies as government speech. The three factors set forth by both Walker and Summum may be summarized as follows: (1) the historical message sent by the type of speech; (2) whether a reasonable observer would conclude that the government endorses with the message displayed; and (3) the amount of government control over the messages. Relying on those factors, the Court concluded that Mech's banners were, in fact, government speech. Notably, the Court found that while a medium that has long communicated government messages is more likely to be government speech, a historical pedigree to a message is not a

prerequisite for government speech. Further, the banners were intended to thank the sponsors of the school for their funding, not as advertising for their respective businesses. The Court made clear that this sort of gesture of gratitude is a common form of government speech and easily distinguished the banners from other advertisements. Ultimately, the Court held that despite the lack of historical evidence, the banners exhibited strong indicia of government endorsement and control and thus, Mech's First Amendment claim failed.

Source: Opinion.

FL DOE Issues Important MTSS Technical Assistance Paper

School district responsibilities for implementing "Response to Intervention" ("RTI") or "Multi-Tiered System of Supports" ("MTSS") continue to be a hot topic and is sometimes the basis of claims that a school district violated the IDEA's Child Find provisions. Importantly, on November 20, 2015, the Florida Department of Education ("FL DOE") issued a new Technical Assistance Paper ("TAP") addressing MTSS and school district general education intervention requirements. All school district personnel in Florida responsible for MTSS should carefully review the TAP as it is the first significant guidance to be offered by FL DOE since 2011.

A copy of the TAP is available at the following link: 2015-151.

Major Sexting Scandal at Public High School in Colorado

As school districts continue to combat cyberbullying perpetrated through apps and social media, a major issue continues to arise through the United States – sexting among students. A recent scandal in Colorado highlights the potential ramifications of sexting in schools. Cañon City High School recently learned that students exchanged hundreds of nude photos of themselves, including some taken while on the school's campus. In addition to a felony police investigation, the school has already cancelled a football game and is investigating whether any adults are also involved.

Source: CNN.

7th-grader Died Because School Failed to Stop Bullying Over Religion

Parents are suing the Moss Point School District, Magnolia Middle School principal Joanne Pettaway, and then-school Superintendent Maggie Griffen for failing to protect their son's religious freedom after he died from injuries he sustained from an attack and assault by his classmates at school. Lorel Ka'heim Malone was a deeply religious 12 year old boy who was harassed by classmates for his beliefs, size, clothes, and appearance for months leading up to his death. His parents had met with the school principal twice to discuss the situation and were told that the school would "get to the bottom of the matter."

The lawsuit claims that Lorel's death was caused by the indifference of the school district staff, coupled with a lack of training. The school district has not yet responded to the lawsuit.

Source: Miami Herald.

From the Lighter Side: Judge Uses Taylor Swift Lyrics to Dismiss Case Against Swift

In a recent decision, apparent Taylor Swift fan, Judge Gail Standish, creatively used lyrics from Swift's hit songs to write her decision in a case in which Swift was a party. Swift was the defendant in a copyright action filed by Jessie Braham. Braham claimed Swift stole lyrics from one of his songs to create "Shake It Off". Judge Standish dismissed the lawsuit filed in the Central District of California without prejudice.

Source: Above the Law.

Firm News

Terry J. Harmon presented "2015 Legal Update: Title IX Sexual Violence Issues in Higher Education - A comprehensive update on 2015 higher education cases and investigations under Title IX in the area of sexual violence" at the 2015 Education Law Association Annual Conference held in Cleveland, Ohio, on November 5, 2015.

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.