

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT November 2019

Update: Virginia School District's Appeal of Transgender Student Bathroom Case

As we reported in our August 2019 edition of the Education Law Alert, the Eastern District of Virginia granted summary judgment in favor of Grimm, finding that denying him access to the bathroom matching his gender identity and refusing to change the gender marker on his student records violated Title IX and the Equal Protection Clause. The school district subsequently appealed the decision to the Fourth Circuit Court of Appeals.

Update: The Fourth Circuit denied the school district's motion to hold the appeal in abeyance pending the U.S. Supreme Court's resolution of R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission, No. 18-107, *cert. granted* (U.S. April 22, 2019). The school district filed its Initial Brief on October 22, 2019, and Grimm filed his Response Brief on November 18, 2019.

Eleventh Circuit Finds in Favor of School Resource Officer

On November 18, 2019, the Eleventh Circuit Court of Appeals rendered a decision in Hines v. Jefferson (Case No. 18-14211), a case that arose after School Resource Officer Deputy Felicia Jefferson broke up a fight between two students. Deputy Jefferson was sued in her individual capacity for excessive force, malicious prosecution, and excessive corporal punishment. Even when viewing the facts in the light most favorable to the Plaintiff, the Court held that Deputy Jefferson's conduct in playing Plaintiff in a choke hold and carrying her to the officer by her neck were not grossly disproportionate to the situation, thereby defeating Plaintiff's excessive force claim. Likewise, with respect to Plaintiff's excessive corporal punishment claim, the Court found that Deputy Jefferson's conduct was not intended as discipline; therefore, Plaintiff's claim failed.

A copy of the opinion is available at the following link: [Hines v. Jefferson](#).

Florida State Board of Education Rule Requires K-12 Child Trafficking Prevention Education

School districts need to be aware that on November 6, 2019, the Florida State Board of Education adopted Rule 6A-1.094123, Florida Administrative Code (Child Trafficking Prevention Education). The new rule mandates that child trafficking prevention and awareness education be provided to K-12 students. The new rule further includes December 1 and July 1 annual reporting requirements.

The new rule is accessible at the following link: [Rule 6A-1.094123](#).

Proposed Legislation in Florida Further Addresses the Use of Marijuana in Schools

On October 31, 2019, Senator Bill Montford proposed legislation that further addresses how school districts must handle the use of marijuana in schools. The proposed legislation would create a new statute (F.S. 381.9867 – Medical use of marijuana in schools) that, among other things, mandates that school principals designate an isolated area on school grounds where marijuana may be administered to the student. The proposed legislation also prohibits a school from obstructing a student from marijuana during the school day.

A copy of the proposed legislation is available at the following link: [SB 720](#).

Tenth Circuit Concludes IDEA Claim Moot

On November 14, 2019, the Tenth Circuit Court of Appeals dismissed Nathan M. v. Harrison School District No. 2 (Case No. 19-1008) as moot, because “the IEP at issue governed a school year that has passed, and because the various IEP deficiencies alleged by Parent are not capable of repetition yet evading review.” In Nathan M., the parent alleged the following IDEA violations:

- (1) the District predetermined Nathan’s educational placement,
- (2) the District failed to review current evaluation data in developing Nathan’s IEP,
- (3) the District failed to ensure the attendance of Alpine staff at all IEP meetings,
- (4) the District failed to properly consider Nathan’s behaviors and develop an adequate BIP for Nathan’s IEP, and
- (5) Nathan’s IEP failed to provide special education and related services necessary to allow Nathan to make progress appropriate in light of his circumstances.

Ultimately, the Court concluded, “[a]lthough Parent and the District may continue to lock horns over Nathan’s educational placement, their dispute has not sharpened into a specific legal controversy that this court is capable of resolving. Thus, our decision on the merits of Nathan’s 2016 IEP could have no effect ‘in the real world,’...and could do nothing to avoid future conflict...”.

A copy of the opinion is available at the following link: [Nathan M. v. Harrison School District No. 2](#).

Third Circuit Hears Oral Argument in Case Involving Student Free Speech and SnapChat

[Courthouse News Service](#) reported on November 12, 2019 (Emilee Larkin) that the Third Circuit Court of Appeals heard arguments in a case involving a cheerleader who was kicked off her cheerleading team for an off-campus SnapChat post. The post included numerous obscenities. The

student ultimately prevailed on summary judgment at the trial court level and, thereafter, the school district appealed to the Third Circuit. Ms. Larkin's article includes numerous quotes of arguments made by the parties.

A decision has not yet been made in the appeal.

U.S. Secret Service Releases Analysis of Targeted School Violence

This month, the U.S. Secret Service released a written report titled, "Protecting America's Schools: A U.S. Secret Service Analysis of Targeted School Violence." Regarding the report, Director James M. Murray stated as follows:

"With this study, the Secret Service provides an unprecedented base of facts about school violence, as well as an updated methodology and practical guidelines for prevention. We encourage all of our public safety partners and education partners to review the information within, and to use it to guide the best practices for maintaining a safe learning environment for all children."

The report includes a study of 41 targeted school attacks from 2018-2017 and several suggestions for future preventative measures.

A copy of the report is available at the following link: [U.S. Secret Service](#).

From the Lighter Side - Boss Makes a Dollar, Employee Makes a Dime, Now Employee Has Nothing but Free Time

Cody Hidalgo worked for Roman Stoneworks in Detroit, Michigan, until he shared a meme on his Facebook page. The meme – which he posted on a Sunday when he was not working – was a picture of Sesame Street's "Elmo" sitting on a toy potty and included the words "Boss makes a dollar, I make a dime. That's why I poop on company time." Hidalgo's manager discovered the post and sent Hidalgo an angry text message that suggested the manager thought Hidalgo was actually spending work hours on the toilet, and recommended that Hidalgo look for employment elsewhere.

Not sure if he had been fired or not, Hidalgo returned to work on Monday, and worked part of the week. He walked off the job on Wednesday, claiming "bad blood" with management following his Facebook post.

Read more [here](#).

Firm News

Attorneys [Robert J. Sniffen](#), [Michael P. Spellman](#), and [Dawn P. Whitehurst](#) presented "Labor & Employment Law Workshop" for supervisors and members of administration of Flagler University in St. Augustine, Florida. They presented an overview of employment laws and discussed topics such as harassment prevention and response, ADA compliance, and overtime law.

Sniffen & Spellman Law Clerk Meaghan Maus (3L) reached the championship round of the Buffalo-Niagara Mock Trial Competition as part of the Florida State University College of Law Trial Team. Ms. Maus and her team competed in a field of 36 teams from across the United States.

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.