

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT December 2019

Eleventh Circuit Hears Oral Argument in Transgender Student Bathroom Case

On December 5, 2019, the Eleventh Circuit Court of Appeals (Alabama, Florida and Georgia) heard oral argument in Drew Adams v. School Board of St. Johns County, Florida (Case No. 18-13592), a case involving the issue of whether separating student bathrooms in K-12 schools on the basis of biological sex is permissible under Title IX and the Equal Protection Clause. Jeffery D. Slanker and Terry J. Harmon of the Firm appeared in Atlanta, Georgia, on behalf of the School Board. A decision in the case is expected in the coming months and could have a significant impact on public school operations in Alabama, Florida and Georgia.

Audio from the oral argument is available at the following link: Drew Adams v. School Board of St. Johns County, Florida (argument date December 5, 2019).

Florida Grand Jury Issues Second Interim Report on School Safety

On December 11, 2019, the Twentieth Statewide Grand Jury issued its Second Interim Report on School Safety. The 18-page Second Interim Report is critical of safety efforts undertaken by school districts in Florida and urges the Florida Legislation to consider the report during the upcoming legislative session. If they have not already, it is highly recommended that all school district personnel responsible for school safety carefully review the entire report.

A copy of the Second Interim Report is available at the following link: Report.

Federal Court Finds Off Campus Sexual Assault a Basis for Liability Against University under Title IX

On November 29, 2019, the United States District Court for the Western District of Tennessee issued an Order in Jane Doe v. The University of Memphis (Case No. 2:18-cv-2032-MSN-cgc) denying a Motion to Dismiss Doe's lawsuit filed by the University. In Doe, the University argued that it was not liable under Title IX, because Doe was sexually assaulted (twice) off campus. In denying the University's Motion, the Court held, among other things, as follows:

... the Court concludes that she has sufficiently pleaded a cause of action under Title IX as to both theories—deliberate indifference and hostile environment. Specifically, Plaintiff's Second Amended Complaint provides detailed factual allegations of harassment occurring in contexts that Defendant appears to control, even though the alleged sexual assaults did not ultimately occur in a context within Defendant's control. Although the off-campus context has never been directly

addressed as a threshold issue in this Circuit, allowing Plaintiff to move forward at this stage of the litigation is consistent with the holdings of other district courts addressing cases involving allegations of off- campus assaults.

A copy of the opinion is available at the following link: [Doe v. The University of Memphis](#).

U.S. Justice Department Files Statement of Interest Supporting Free Speech

On December 9, 2019, the U.S. Justice Department filed a Statement of Interest in a Mississippi federal court case involving allegations by a campus organization and a student that Jones County Junior College violated their First Amendment rights by requiring all meetings or gatherings to be preapproved by the College. A press release issued by the Justice Department states, among other things, as follows:

“Unconstitutional restrictions on our first freedoms to speak and assemble directly threaten our liberty as Americans,” said U.S. Attorney Mike Hurst for the Southern District of Mississippi. “While some may disagree with the content of one’s speech, we should all be fighting for everyone’s Constitutional right to speak. I pray JCJC will do the right thing, change its policies to comply with the U.S. Constitution, and encourage its students to speak and assemble throughout our free state.”

The press release and Statement of Interest are available at the following link: [U.S. Justice Department](#).

US DOE: Reminder to Postsecondary Institutions of January 31 and July 31 Financial Reporting Requirements

On December 23, 2019, the U.S. Department of Education sent electronic notice to all postsecondary institutions reminding them of their “legal obligation to report to the Department of Education ownership and control by foreign sources as well as gifts from and contracts with foreign sources that have a total value of \$250,000 or more within a given calendar year.” Such reports must be made on January 31 and July 31 each year in accordance with Section 117 of the Higher Education Act. The electronic notice also notified postsecondary institutions that they have the option to use the new reporting system which collects additional information.

The electronic notice is available at the following link: [US DOE](#).

Florida Legislature Again Looking to Limit School Board Member Terms

The Florida Legislature is again seeking to limit terms for school board members in Florida. The House seeks to limit terms to eight consecutive years, and the Senate is seeking to limit terms to twelve consecutive years. Similar legislation was introduced but failed last year. More information is available at the following links: [HJR 157](#); [SJR 1216](#).

Proposed Legislation in Florida Permits Colleges and Universities to Sponsor Charter Schools

On December 13, 2019, legislation was filed in the House (HB 953) authorizing colleges and universities to sponsor charter schools. The proposed legislation further specifies that the board of trustees for any institution sponsoring a charter school shall be considered the “local educational agency” for compliance and responsibility purposes. If approved, the legislation would take effect on July 1, 2020.

More information is available at the following link: [HB 953](#).

From the Lighter Side (Not Really): California Law Makes it Illegal to Suspend Students for Disobeying Teacher

Beginning in 2020, it is illegal – yes, *illegal* – to suspend students in grades 1-5 for “willfully defying teachers and administrators.”

More information is available at the following link: [WFLA.com](#).

Firm News

On January 23, 2020, from 2:00-3:30 p.m., Terry J. Harmon will be presenting “Navigating Manifestation Determination Reviews to Avoid Compliance Pitfalls”, a webinar hosted by LRP Publications. Individuals interested in registering can visit LRP Publications’ website at the following link: <https://www.lrpeducationwebinars.com/register.html>.

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.