SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT

December 2013

First DCA Holds University Policy Improperly Prevented Students from Lawfully Storing Guns on Campus in Parked Vehicles

The First DCA recently decided a case involving guns on state university campuses that will have a dramatic impact on public universities and entities. In Florida Carry Inc., v. University of North Florida (Case No. 1D12-2174), the First DCA addressed the question of whether "a state university may prohibit the carrying of a securely encased firearm within a motor vehicle that is parked in a university campus parking lot." In Florida Carry Inc., the University's policy at issue banned the storage of any weapon or destructive device in a vehicle located on University property. Plaintiff, a student enrolled at the University, filed suit because she desired to carry a firearm while traveling to and from school as a lawful method of self-defense. The University argued, among other things, that it was permitted to adopt a written policy banning weapons in vehicles under F.S. 790.115, because the statute authorized "school districts" to adopt such a policy.

Ultimately, the First DCA sided with Plaintiff and held that the legislature has not delegated its authority under the Florida Constitution to regulate the manner of bearing arms to state universities. Moreover, the "school district" exception did not apply to the University. As such, the University could not prohibit Plaintiff from storing her firearm in her car on University property.

The decision in Florida Carry Inc. serves as notice to all state universities that they may not adopt a policy banning firearms from being lawfully secured in vehicles on campus. Additionally, other governmental entities should consider reviewing their current policies to ensure they comply with the decision issued in Florida Carry Inc.

The Court's decision is available at the following link: Florida Carry Inc.

Supreme Court Refuses to Hear Lawsuit Over Obamacare

In early December, the United States Supreme Court refused to hear Liberty University's challenge to the Affordable Care Act. The Court's decision leaves in place a federal appeals court ruling dismissing the Virginia-based Christian university's challenge to the law, specifically the contraception mandate and the requirement on employers to provide coverage.

Liberty University was one of the first to go to court to protest the new health care law. It sought Supreme Court review earlier, but the Justices declined to hear that case, although they did agree

to allow Liberty to return to the Fourth Circuit to press its claims. That further review by the Circuit Court, rejecting all of Liberty's challenges, is what the Justices refused to disturb this month.

The contraception mandate will come before the Supreme Court, however, perhaps as early as March, in challenges brought by Hobby Lobby and a Pennsylvania company, Conestoga Wood Specialties Corp.

Source: Washington Post.

Supreme Court Refuses to Hear School Bullying Case

The United States Supreme Court refused to hear an appeal by twin girls and their parents which claimed school officials violated the sisters' civil rights by refusing to expel a student who repeatedly attacked and harassed them. The underlying lawsuit claimed a classmate attacked the sisters, calling one a "cracker" and "retarded," harassing her by phone and Internet, and trying to push her down stairs. According to the lawsuit, incidents continued even after juvenile court officials declared the harassing student delinquent and ordered her to stay away from the family. The lawsuit claimed school officials had a duty to protect the twins and caused a dangerous situation.

A federal magistrate in Pittsburgh rejected the claim in 2011, ruling the district did not have any "special relationship" with individual students that require protection. In a 10-4 decision, the Third Circuit Court of Appeals sitting en banc in June ruled the same.

Source: Pittsburgh News

Supreme Court Denies Review of Case Demanding that School Officials Heat Student's Lunch

On December 9, 2013, the United States Supreme Court denied review of Moody v. NYC Dep't of Education (Case No. 13-577). In Moody, a mother filed suit on behalf of her diabetic son alleging that his school violated her son's right to a free appropriate public education by refusing to reheat his homemade lunch. The Second District Court of Appeals affirmed summary judgment in favor of the New York City Department of Education, holding that Section 504 of the Rehabilitation Act of 1973 does not require "optimal" accommodations. Section 504 only requires meaningful access to the benefits of a public school education. The Court further noted, "…even if [the student] skipped lunch and disliked the food on the school menu, that did not warrant a further accommodation in addition to what the school had already provided."

The opinion from the Second Circuit Court of Appeals is available at the following link: Moody.

Florida DOE Technical Assistance Paper Addresses Revised Rules Concerning ESE Services

The Florida Department of Education recently released a technical assistance paper ("TAP") detailing the changes to three rules concerning exceptional student education ("ESE") eligibility requirements for infants, toddlers, and prekindergarten children. The first topic of the TAP addresses the use of an additional year of prekindergarten services. Currently, prekindergarten students in ESE programs may use an additional year of services if deemed necessary. The TAP discusses requirements for giving parents notice of this option and advising them of the implications of using an additional year. The second topic of the TAP addresses defining and establishing an "established condition" or "developmental delay" in children under 2 years of age for purposes of determining their eligibility for early intervention services.

The TAP is available at the following link: 2013-117.

Proposed Florida Legislation Promotes Public Access to Public School Facilities Through Voluntary Adoption of School Board Policies (Non-Mandatory)

Representative Ross Spano (R) recently filed a bill (H.B. 277 – Joint Use of Public School Facilities) in the Florida House of Representatives designed to promote public access to outdoor recreation and sports facilities on school property to reduce the impact of obesity on personal health and health care expenditures. The bill also promotes joint-use agreements and includes an appeals process if negotiations for joint-use agreements fail. Under the proposed legislation, school boards would be immune from certain liability in relation to joint-use agreements except in instances of gross negligence or intentional misconduct.

Decision to Terminate Counselor for Relationship Advice Book Upheld

The Seventh Circuit Court of Appeals upheld the termination of Bryan Craig, a tenured high school guidance counselor in Chicago, who published a short book on adult relationship advice entitled, "It's Her Fault." In the book, Craig repeatedly discussed sexually provocative themes and used sexually explicit terminology. Craig was terminated by his school district as a result of the book. Craig then sued the school district and several others under 42 U.S.C. $1983 alleging that they improperly retaliated against him for engaging in protected speech under the First Amendment.

The Seventh Circuit ultimately upheld the dismissal of Craig's claim finding that the school district's interest in ensuring effective delivery of counseling services outweighed Craig's speech interest. The school district successfully argued that the content of the book would disrupt the learning environment because students, upon learning of its content, would be less likely to seek advice.

A copy of the opinion is available at the following link: Craig v. Rich Township High School District (Case No. 13-1398).

Florida Graduation Rates Continue to Rise

The Florida Department of Education recently announced that federal graduation rates have increased again. Since 2010/2011, graduation rates in Florida have increased 5 percentage points. The current graduation rate is 75.6%, which is based on the percentage of students who graduate within four years of their first enrollment in ninth grade.

More information regarding Florida's graduation rates is available at the following link: Press Release.

From the Lighter Side: No Mistletoe for this Six-Year Old

A story about a six-year-old boy who was suspended for kissing a female classmate's hand made its way around the Internet and ultimately led to the dismissal of his discipline. The student had previously been disciplined for attempting to kiss the same girl and, due to his hand-kissing decision, was charged with a violation of the school's sexual harassment policy which expressly prohibits "unwelcome touching, such as patting, pinching or repeated brushing against another's body."

The mother of the alleged kisser claimed it was an innocent crush. The mother of the recipient of the kiss contended the boy had repeatedly attempted to kiss her daughter by sneaking up on her. No criminal charges were ever contemplated and the school's sexual harassment charge was ultimately reduced to "misconduct."

The story which received over 12,000 comments is available at the following link: Yahoo! News.

Firm News

The attorneys and staff of Sniffen & Spellman, P.A. wish you and yours a happy New Year.

Past Issues of the Education Law Alert Available on Website

Past issues of the Education Law Alert are available on the Firm's website: www.sniffenlaw.com.