

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT

November 2013

Case Law Update: Fifth Circuit Hears Oral Argument in Fisher v. University of Texas at Austin

In the June 2013 edition of the *Education Law Alert*, we informed our readers that the U.S. Supreme Court in Fisher v. Univ. of Texas at Austin, et al. (Case No. 11-345) did not invalidate race-based admissions practices; rather, it determined that the Fifth Circuit did not apply the correct strict scrutiny standard when it reviewed and upheld the University of Texas' race-based admission practices. The U.S. Supreme Court further remanded the case to the Fifth Circuit so that the Fifth Circuit could apply a strict scrutiny standard to the University of Texas' race-based admission process. On November 13, 2013, the Fifth Circuit heard oral argument from the parties. A decision has not yet been rendered.

The Supreme Court's June 2013 opinion is available at the following link: [Fisher](#).

Source: [The Daily Texan](#).

School Employees Charged in Connection with Steubenville Rape Case

The August 2012 case involving a female student who was raped by two other students at a party continues to grow in scope. The Steubenville case initially attracted nationwide attention after photos and videos of the victim were broadcast on social media. On November 25, 2013, Ohio Attorney General Mike DeWine announced that four school employees, including the Steubenville City Schools Superintendent, have been charged with crimes ranging from a felony to misdemeanors. While most of the charges relate to the August 2012 rape, some of the charges stemmed from an April 2012 rape involving a different student.

Source: [CNN](#).

College Sued After Student Fails Math Classes

Hannah Valdez, an art student at Rocky Mountain College ("College") in Billings, Montana, has filed a lawsuit trying to force the College to allow her to substitute two non-math courses so that she can graduate. Valdez failed the two required math classes. The lawsuit alleges the College did not comply with the Americans with Disabilities Act. Valdez suffers from numerous disabilities including, but not limited to, Asperger's Syndrome, Bipolar Disorder and Dyscalculia. According to her lawyer, Dyscalculia is a mathematics learning disability.

Valdez scored in the bottom 5% of students nationwide on the math portion of the SAT, a fact that her attorney says the College was well aware of before she was admitted. The College has offered to assist Valdez in numerous ways including through free math tutoring. However, the College refuses to waive the math requirement for graduation.

Source: [Missoulia](#).

School District Cancels Work With Evangelical Organization Upon Threat of Lawsuit

A Colorado charter school has recently canceled a charity program to provide Christmas gifts to the underprivileged after threatened with a lawsuit alleging that the program violated the United States Constitution. The school, SkyView Academy, was working with the evangelical Christian charity “Operation Christmas Child” to provide gifts to poor children in developing countries in an effort to promote Christianity. The American Humanist Association threatened the school with suit alleging that the program with Operation Christmas Child violated the Establishment Clause of the Constitution. The American Humanist Association claimed that the school aggressively promoted student involvement in the program through “bribes” such as a pizza and an ice cream party or choice of dress day for the class that collected the most gift boxes. The school halted the program after the threat of the lawsuit claiming that it was doing so to protect its reputation.

Source: [9NEWS.com \(Colorado\)](#).

Student Sues Multiple Parties Demanding \$30 Million for Bullying at Tennessee School

A Tennessee student’s court-appointed guardian has filed suit against several parties including the school board and director of schools for allegations of bullying dating back to 2012. The complaint, seeking \$30 million in damages, alleges that the fifteen-year-old student was attacked by four classmates. The complaint further contends that the attackers approached the victim, hit her head on a metal pole several times, kicked her, and punched her. In addition to these allegations, the student claims that a teacher walked by but took no action to stop the assault or to provide help while she was being beaten.

Source: [WBIR.com](#).

Virtual Charter School Settles Investigation with U.S. DOE’s Office for Civil Rights

The U.S. Department of Education’s Office for Civil Rights (“OCR”) recently completed a compliance review of an Ohio internet-based public charter school. During its review of the online education provided, OCR found several issues related to compliance with various federal statutes that protect students’ civil rights and entitlement to a free appropriate public education. The investigation resulted in findings that the school provided inadequate methods of identifying, evaluating and placing students with disabilities and did not establish a disability grievance procedure. Additionally, the school’s web-based format was not accessible to blind students or those with learning disabilities. The school and OCR resolved the matter through an agreement which contains several requirements pertaining to monitoring and compliance with

federal laws, including Section 504 of Rehabilitation Act of 1973 and the Title VII of the Civil Rights Act of 1964.

More information related to the settlement is available at the following link: [OCR](#).

Proposed Legislation Addresses Reemployment of Retired District Personnel

House Bill 295 (“HB 295”) was recently filed in the Florida House of Representatives and addresses reemployment of retired school district personnel. HB 295, titled, “Employment after Retirement of School District Personnel,” revises provisions relating to reemployment of retirees as instructional personnel on a contract basis and provides legislative intent and findings to clarify authorization to award contracts. HB 295 emphasizes numerous times that retirees are not entitled to professional service contracts.

More information regarding HB 295 is available at the following link: [HB 295](#).

Florida Students (and Parents) May Get Career and College Readiness Help

Senator Oscar Braynon, II (D) recently introduced Senate Bill (“SB 304”) which requires each school district to offer a course in “College and career readiness.” As drafted, the course would be available for 11th and 12th graders “to better prepare them for their chosen paths after graduation.” The framework of the class would require a pre-class assessment of each student to establish his or her interest. Based on the assessment, the student, school counselor, and parents would be responsible for creating a postsecondary and career readiness plan. The class would allow students to use school time to do many of the tasks currently done by students (and parents) on their own personal time such as the following:

- Research admission and application requirements;
- Write personal statements or college entrance letters;
- Learn about scholarships and financial aid;
- Apply for state and federal student award and work-study programs;
- Write resumes;
- Learn about personal finance, credit card dept, savings and banking;
- Identify internships, apprenticeships and volunteer opportunities;
- Participate in mock interviews; and
- Tour campuses of local post-secondary educational institutes.

More information regarding SB 304 is available at the following link: [SB 304](#).

Proposed Bipartisan Bill Expanding Access to Early Education Introduced by Congress

The Strong Start for America’s Children Act was recently applauded by U.S. Department of Education Secretary Arne Duncan, members of Congress, and numerous other members of the public. According to the Committee on Education & the Workforce, the Act provides as follows:

- The early childhood education proposal is a 10-year initiative to expand and improve early learning opportunities for children across the birth to age 5 continuum. The bill would fund preschool for 4-year old children from families earning below 200% of the Federal Poverty Level (FPL), and encourage states to spend their own funds to support preschool for young children with family incomes above that income level. The legislation would establish a new federal-state partnership with formula funding for 4-year old preschool, with a state match, to all eligible states, based on each state's proportion of 4-year olds under 200% of the FPL. States would provide subgrants to high-quality, local providers, including local educational agencies (LEAs) and community-based providers (such as child care and Head Start programs) that have partnerships with LEAs. The bill also authorizes a new Early Head Start partnership with child care to improve the quality of care for infants and toddlers.

More information is available at the following links: [U.S. DOE](#); [Committee on Education & the Workforce](#).

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.

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