

SNIFFEN & SPELLMAN, P.A.



Education Law Alert

May 2014

Recap of Florida's 2014 Legislative Session

Each year the Florida Legislature convenes in March in Tallahassee for sixty days to consider and vote on proposed bills that would impact Florida's future if approved and enacted into law. Key pieces of education legislation passed this year are as follows:

In-State Tuition: This bill provides that children of undocumented immigrants that have attended Florida public schools for at least three years prior to applying to in-state public universities are entitled to in-state tuition rates at those universities.

Vouchers: This bill allows the state's main school-voucher program to expand enrollment in exchange for some increased oversight of the program.

Educational Data Privacy: This bill requires an annual notice to K-12 students and parents of rights relating to education records. The bill also includes new limitations on the collection of information and the disclosure of confidential and exempt student records.

Instructional Materials for K-12 Public Education: The bill includes the requirements for school district instructional materials programs as well as the criteria for review, recommendation, and adoption of instructional materials.

Education Accountability: The legislation provides definitions for the statewide, standardized assessment program and school grading system, revises criteria that necessitate a school's improvement plan to include certain strategies, provides that a child with a medical complexity may be exempt from participating in statewide, standardized assessments under specified circumstances, and authorizes bonus rewards to school districts for progress toward educator effectiveness.

Of note, [House Bill 753](#) failed to pass. The bill was designed to address school safety but contained controversial provisions, including one which granted principals and superintendents the ability to designate individuals to carry concealed firearms in school.

USDOE Issues Guidance to Public Charter Schools Addressing Applicability of Federal Civil Rights Laws

The United States Department of Education's ("USDOE") Office for Civil Rights ("OCR") issued [guidance](#) this month confirming that Federal civil rights laws apply equally to public schools and public charter schools. A press release issued by USDOE states as follows:

The new guidance highlights critical subjects that have arisen in charter schools, including the schools' obligations to avoid discrimination in admissions practices and the administration of discipline; to provide a free appropriate public education for students with disabilities; and to take affirmative steps to assist English learners. The guidance also points to other OCR publications regarding additional civil rights principles that are equally applicable to charter schools.

While the guidance document makes clear that public charter schools must comply with Section 504's free appropriate public education ("FAPE") requirement, the guidance document expressly states that it does not address the Individuals with Disabilities Education Act's ("IDEA") definition of FAPE or other related IDEA requirements.

More information is available at the following link: [US DOE Press Release](#)

NLRB's Ruling that Northwestern University Football Players are Employees has Far-Reaching Implications for Private Colleges and Universities

The March 26, 2014, ruling by the National Labor Relations Board's ("NLRB") Regional Director that Northwestern University's football players are "employees" for purposes of the National Labor Relations Act ("NLRA") has been viewed by some as an anomaly. While Northwestern has filed an appeal of the ruling to the full NLRB, the Regional Director's ruling stands unless or until the NLRB overturns it. The decision is troubling and sends an equally important signal - the Regional Director reached a conclusion once viewed as unthinkable by many demonstrates just how far the NLRB, or at least a significant segment of the agency, is willing to expand Federal labor laws.

Numerous important questions stand unanswered following the decision. Will the NLRB find that a coach is prohibited from restricting a student-athletes' use of social media? Will other federal agencies follow suit? If so, could the Equal Employment Opportunity Commission ("EEOC") reach a similar determination and require colleges and universities to achieve racial and ethnic balance among its teams? Similarly, will principles of disparate treatment apply, subjecting schools to suit if a coach disciplines one player differently than another? Will the Department of Labor ("DOL") find that student-athletes are covered by the Family and Medical Leave Act ("FMLA")? These and other possibilities are, to say the least, chilling.

Private and public colleges and universities should keep a close eye on the NLRB's decision. We will report back on which path the NLRB chooses.

"Under God" in Pledge of Allegiance Held Constitutional by Massachusetts Court

Plaintiffs Jane Doe and John Doe brought suit challenging the practice by which the Pledge of Allegiance is recited each morning in the Defendants' schools and in schools across Massachusetts. Plaintiffs and their three children are atheists and Humanists. They alleged that the daily recitation of the Pledge violated their rights under the Massachusetts Constitution, because the Pledge includes the words "under God." At the heart of the parents' claim is the argument that those students who choose not to recite the Pledge for reasons of non-belief in God are quite visibly differentiated from other students who stand and participate. Plaintiffs contend that the recitation of the Pledge makes the Doe children outsiders to their peer group on the grounds of their religion. Participation in the Pledge of Allegiance is voluntary, and any teacher or student may abstain themselves from participation in the Pledge of Allegiance for any or no reason, without explanation and without any form of recrimination or sanction.

In upholding the constitutionality of the "under God" reference in the Pledge, the Court reasoned that there is no discriminatory classification because "there is no differing treatment of any class or classes of students based on their sex, race, color, creed, or national origin. All students are treated alike. They are free, if they choose, to recite the pledge or any part of it that they see fit. They are entirely free as well to choose to abstain. No one is required to say all or even any part of it. And significantly, no student who abstains from reciting the pledge, or any part of it, is required to articulate a reason for his or her choice to do so."

Source: [Washington Post](#)

ACLU Contends California State Board of Education Denied Equal Education Time to Minorities and Low-Income Students

On May 29, 2014, several low-income and minority students represented by the American Civil Liberties Union ("ACLU") filed suit against the State of California, the State Board of Education, and several others alleging Plaintiffs' Constitutional rights were violated when they received less instructional time than their peers. Plaintiffs contend they were denied equal access to a meaningful education. The 73-page Complaint further alleges as follows:

Students in these seven schools receive fewer minutes of learning time per hour, fewer hours per week, and fewer weeks per year. As a result of this massive deprivation, an indefensibly high percentage of students at these schools fall far behind, give up, and drop out, not as result of any deficiencies on their part, but because the grade-level academic content standards that the State requires they be taught cannot be delivered and mastered in the actual learning time provided at their schools. The actual learning time available at these schools falls far below the norm in public schools across the State of California due to conditions at the schools triggered through inequities in the educational delivery structures established by the State that these students and their educators must confront every day and cannot overcome, no matter how great their commitment and efforts may be.

The lawsuit demands a number of remedies, including injunctive relief, costs, disbursements, attorney's fees and expenses.

Source: [Los Angeles Times](#)

60th Anniversary of Brown v. Board of Education

It has been 60 years since one of the biggest education law decisions was handed down by the U.S. Supreme Court in [Brown v. Board of Education](#), 347 U.S. 483 (1954). In [Brown](#), the Court held that segregation has no place in public schools. U.S. Secretary of Education Arne Duncan recently commemorated the 60th anniversary of the decision by writing a blog addressing US DOE's continued challenges with educational equality.

A copy of the historical opinion in [Brown](#) is available at the following link: [Brown](#)

Secretary Duncan's blog is available at the following link: [Duncan's Blog](#)

Study Reveals Bullying Victims More Likely to Bring Weapon to School

Over the past several years, numerous laws have been passed to address bullying and other school safety issues. This month, a study was released indicating that bullied students are 31 times more likely to bring a weapon to school than non-bullied peers. Overall, the study estimates that 200,000 bullied high school students have brought weapons to school. The study was based on data from the 2011 Youth Risk Behavior Surveillance System which included a survey of 15,000 high school students in the U.S.

Source: [American Academy of Pediatrics](#)

From the Lighter Side: Facebook Mom Hushed by Court

It seems like kids take all the heat for being too involved in social networking. For one New Jersey mom, the heat was just turned way up by a Court in New Jersey. The mom (identified as H.L.M.) had been arrested previously for running off to Canada with her kids during a custody dispute with her ex-husband. She eventually pled guilty to interference with custody.

Unfortunately, H.L.M., a former patent lawyer, could not keep her thoughts to herself. She went on numerous Facebook tirades about her ex-husband's and kids' lives (she also blabbed about Jeffrey Dahmer, Satan, and Adolf Hitler). The Court eventually ordered her to stop airing the lives of her ex-husband and kids on Facebook, but gave her a free pass on her other off-the-wall topics.

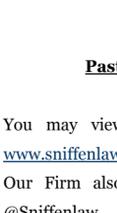
Source: [New York Daily News](#)

Firm News



Robert J. Sniffen was recently named by the prestigious *Chambers* rankings service as one of the notable practitioners in Florida in the Labor and Employment Law field. *Chambers* ranks the top lawyers in the world, and thoroughly researches the credentials of attorneys named to its various bands.

Mr. Sniffen presented "Special Issues in Higher Education" at the 2014 National Public Employment Labor Relations Association's Annual Conference in Scottsdale, Arizona. The presentation focused on labor relations challenges faced by colleges and universities.



Terry J. Harmon was reappointed by The Florida Bar as a member of the Education Law Committee. The scope and function of the Education Law Committee is to bring together education law attorneys, as well as other attorneys that practice in education law-related areas, to review existing areas of education law, to study recent developments in this specialized area of practice of the law, and to keep the members of the bar informed of significant developments in this practice area.



Jeffrey D. Slanker recently presented on the Intersection of Social Media and Legal Issues at the Florida School Board Insurance Trust's Spring Meeting in Celebration, Florida. The presentation focused on legal issues and concerns that come hand-in-hand with increased use of social media by employees, customers, and litigants.

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.