

## EDUCATION LAW ALERT

December 2014

### **Florida Attorney General Approves Use of Armed Security Guards in Manatee County Schools**

On November 21, 2014, Florida Attorney General Pam Bondi issued an advisory legal opinion (AGO 2014-13) to the School District of Manatee County addressing whether a school district may employ private security guards who carry firearms pursuant to F.S. 790.115. Attorney General Bondi answered the question, in pertinent part, as follows:

Section 790.115, Florida Statutes, operates as an exemption from the prohibition against the possession of firearms and weapons on school property and specifically provides that firearms may be allowed in support of an approved school sanctioned activity, but does not define what constitutes "in support of" or an "approved school sanctioned activity." Absent a legislative definition of these terms, it would appear to be within the authority of a school district to make a determination of whether the use of armed private security guards would be in support of an approved school sanctioned activity.

Attorney General Bondi further reasoned that school districts possess home rule authority on this issue and are constitutionally and statutorily charged with the operation and control of public K-12 education within their districts.

A copy of the opinion is available at the following link: [AGO 2014-13](#).

### **Proposed Florida Legislation Makes CPR Instruction Mandatory**

In November, Representative Shevrin D. Jones (D-Broward) filed a bill (House Bill 15) that would require school districts to provide instruction in CPR and the use of automated external defibrillators. The mandatory instruction must be provided to students in grades 9 through 12 in health or physical education classes. The instruction is required to include the following components:

- Include training in the psychomotor skills necessary to perform
- CPR and to use an automated external defibrillator; and
- Be based upon an instructional program developed by:
  - The American Heart Association;
  - The American Red Cross; or
  - Another nationally recognized program that is based upon the most current national evidence-based emergency cardiovascular care guidelines for CPR and the use of an automated external defibrillator.

While instruction is necessary, students are not required to become certified to administer CPR or to use an automated external defibrillator.

More information related to the legislation is available at the following link: [HB 15](#).

### **Firearms on School Grounds Back Before the Florida Legislature**

Every legislative session, it seems bills come out of the Senate and House of Representatives addressing firearms in public schools. Both the Senate (SB 180) and House of Representatives (HB 19) already have bills on the table for the upcoming session. As session ramps up, these bills are sure to garner significant debate. The bill summaries are as follows (quoted):

SB 180 - **School Safety:** Permitting a school superintendent, with approval of the school board, to authorize a school safety designee to carry a concealed weapon or firearm on school property; requiring school boards to formulate policies and procedures for managing active-shooter and hostage situations; permitting district school boards to commission one or more school safety officers on each school campus, etc.

HB 19 - **School Safety:** Permits school superintendent, with approval of the school board, to authorize school safety designee to carry concealed weapon or firearm on school property; provides requirements for school safety designees; provides exception to prohibition on possession of firearms or other specified devices on school property or other specified areas; provides for fingerprint processing & retention; requires that fees be borne by school safety designee or school; requires school boards to formulate policies & procedures for dealing with active shooters & hostage situations in consultation with law enforcement; requires district school boards & private schools to allow campus tours by local law enforcement agencies for specified purposes & that their recommendations be documented; permits district school boards to commission one or more school safety officers on each school campus.

More information related to the legislation is available at the following links: [SB 180](#); [HB 19](#).

### **OCR Guidance on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities**

In what is becoming a common occurrence, the United States Department of Education's ("US DOE") Office for Civil Rights ("OCR") issued additional guidance addressing Title IX. This time, the Title IX guidance addresses single-sex elementary and secondary classes and extracurricular activities. The "Q&A" document was released because OCR "received a number of questions" about Title IX and these classes and activities. OCR has deemed the "Q&A" a "significant guidance document."

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

### **SMU Seeks to Cure Sexual Harassment Issues on Campus**

OCR recently concluded an investigation of Southern Methodist University ("SMU") and determined the school was in violation of Title IX. OCR found that SMU failed to properly respond to students' complaints of sexual violence. OCR and SMU have since entered into a resolution agreement that will require SMU to take significant steps in addressing sexual violence on campus.

SMU was proactive in addressing the sexual violence issues as soon as OCR commenced its investigation. Even while the investigation was ongoing, SMU instituted interim sexual harassment policies until OCR's findings were complete. The interim policies included outreach about sexual misconduct prevention and sexual misconduct reporting procedures. As a condition of the resolution, SMU agreed to finalize the interim procedures subject to OCR's approval.

Catherine Lhamon, OCR assistant secretary, is already pleased with the progress SMU has shown in the short time following the investigation. Lhamon stated, "I appreciate [SMU's] strong commitment in this agreement to provide a safe and supportive educational environment for its students." Among the many terms SMU agreed to as part of the settlement, it must conduct annual climate assessments to ensure future proactive steps are taken by the school. Additionally, SMU is responsible for training staff and students on the revised policies.

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

### **Youngstown State University to Enhance Website Access for Individuals with Disabilities**

Youngstown State University ("YSU") and OCR recently entered into an agreement that will impact the accessibility of the school's websites and online programs for those with disabilities. The announcement of the resolution comes after OCR found YSU in violation of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act. OCR concluded that YSU's websites were neither readily accessible to persons with disabilities nor fully compliant with the requirements involving the publication of a notice of nondiscrimination.

OCR partially focused the investigation on how well individuals with sensory impairments could access and utilize the websites. OCR was chiefly concerned that YSU's previous websites' inaccessibility to individuals with disabilities would discourage such individuals from applying for admission or current students from fully participating. The resolution agreement provides that YSU's websites will now be equally accessible to all individuals. YSU also agreed to provide individuals with disabilities the opportunity to participate in the school's online learning programs.

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

### **High School Association Sued Over Concussions**

Concussion-related lawsuits prevalent in collegiate and professional football are now making their way into the high school ranks. A former high school football player from Illinois recently filed suit against the Illinois High School Association ("IHSA"). "It's the first-ever class action filed against a state high school association," says attorney Joseph Siprut. Siprut filed the class action on behalf of former Illinois high school football player Daniel Bukal.

Bukal played high school football from 1999 to 2003 at Notre Dame College Prep and claims to have suffered many concussions without ever being educated on the impact. His lawsuit accuses IHSA of not having proper concussion protocols and further mishandling student-athlete head injuries, including not removing student-athletes from practice after appearing to sustain head injuries. Bukal says he experiences migraines and memory loss.

Similar lawsuits at higher levels of organized football have become the norm as claims have been brought by former players against the National Collegiate Athletic Association ("NCAA") and the National Football League ("NFL"). The NCAA lawsuit is waiting for a judge's approval on a \$75 million settlement and another federal judge recently approved a \$765 million settlement between former players and the NFL.

Source: [CNN](#)

### **School District Ordered to Pay \$75,000 in Transgender Student's Discrimination Case**

Nicole Maines, a now 17-year-old transgender student, declared a victory in her battle over a school district's refusal to permit her to use communal female restrooms. Maines, who was born male, began identifying as female at the age of two. In third grade, school officials began referring to Maines as female. By fourth grade, they permitted her to use the single-toilette, female restroom. In fifth grade, Maines began using communal female restrooms which the school permitted until it was faced with a challenge by a male student's legal guardian.

Maines was subsequently barred by the school district from using the communal female restroom. Displeased, Maines filed a legal action but lost. Recently, the Oregon Supreme Judicial Court reversed the lower court's order by prohibiting the school district from "refusing access by transgender students to school restrooms that are consistent with their gender identity." The school district was also ordered to pay Maines and her legal counsel \$75,000.

Source: [Portland Press Herald](#).

### **From the Lighter Side: Texas' Merry Christmas Law**

It happens every holiday season. Do you say "Merry Christmas," "Happy Hanukkah," or "Winter Greetings?" In Texas, the answer is simple. In 2013, the Texas Legislature took the initiative to pass a law clarifying that students in public schools are free to exchange holiday greetings and display holiday items as they desire without fear of punishment. Not surprisingly, the American Civil Liberties Union ("ACLU") previously opposed the bill.

Source: [Star-Telegram](#).

### **Firm News**

On December 4, 2014, **Terry J. Harmon** presented on the background of the Family and Medical Leave Act and the Americans with Disabilities Act at the Florida Bar's Continuing Legal Education Committee's Basic Labor & Employment 2014 CLE in Tampa, Florida.

On December 5, 2014, **Terry J. Harmon** presented "Ethics for School Board Officials" to Florida school board members and superintendents at the Florida School Boards Association's 69th Annual Joint Conference in Tampa, Florida.

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

### **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.