

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT October 2015

U.S. Supreme Court Hears Fisher this Term (Affirmative Action in Admissions)

As we reported in the June 2015 edition of the Education Law Alert, the U.S. Supreme Court will rehear *Fisher v. Univ. of Texas at Austin, et al.*, which addresses the use of race in undergraduate admissions decisions. *Fisher* was filed after Abigail Fisher, a Caucasian female, was denied admission into the University of Texas at Austin (“University”). Fisher contended that considerations of race unfairly favored African American and Hispanic students in admissions. The U.S. Supreme Court kicked off this term on October 5, 2015.

The Fifth Circuit’s opinion in *Fisher* is available at the following link: [Fisher](#).

Source: [ABC News](#).

ACLU Appeals Transgender Student’s Title IX Lawsuit Involving Bathroom Accessibility

Earlier this year, the American Civil Liberties Union (“ACLU”) filed a federal complaint on behalf of Gavin Grimm against Gloucester County Public Schools (“GCPS”)(*G.G. v. Gloucester County School Board*, Case No. 4:15cv54). Grimm is a transgender student at Gloucester High School who is now recognized as a male. The complaint alleged GCPS’s policy limiting restroom facilities available to transgender students was discriminatory and in violation of Title IX. The policy also required transgender students to only use single-stall bathrooms or facilities assigned to their biological gender. In late June, the federal government took the position that it is discrimination under Title IX to prohibit students from accessing restrooms that match their gender identity.

On July 27, 2015, U.S. District Judge Robert G. Doumar dismissed the Title IX portion of the student’s lawsuit and found that schools may have separate restrooms based on sex. On October 21, 2015, the ACLU filed an appeal seeking to overturn Judge Doumar’s ruling.

The ACLU’s Appellate Brief is available at the following link: [ACLU Appellate Brief](#).

Source: [Daily Press](#).

Student Expelled for Sexual Misconduct Reinstated by Judge

Middlebury College (“Middlebury”) is a small, independent college located in Vermont. Over the past few months, it has been involved in a federal case in Vermont involving its dismissal of a student over sexual misconduct violations. *Doe v. Middlebury College*, Case No. 1:15-cv-00192-jgm. Fairly summarized, Doe, a student at Middlebury College, was accused of engaging

in sexual misconduct while in the study abroad program. He was investigated by the School for International Training (study abroad sponsor) and ultimately cleared. Doe returned to school and was investigated a second time, this time by Middlebury. Doe alleged that Middlebury's investigation and ultimate decision to expel him was biased, unfair, and discriminatory.

On September 16, 2015, the United States District Court for the District of Vermont issued a Ruling on Emergency Motion for Preliminary Injunction, ordering that Doe be permitted to attend classes during the lawsuit. The Court reasoned, among other things, as follows:

The Court finds Plaintiff has demonstrated a sufficiently serious question regarding whether Middlebury violated its policies in conducting a second investigation of the charge of sexual assault against Plaintiff after he was exonerated by one U.S. institution following an investigation and hearing.

The Court's decision is currently available at the following link: [Doe v. Middlebury College](#).

Source: [Portland Press Herald](#).

National Labor Relations Board to Reconsider Grad Student Unionization

The National Labor Relations Board has decided to revisit whether grad students at private sector, non-profit colleges and universities may form and join unions for the purpose of collective bargaining. Last week, the Board voted 3-1 to consider a petition filed by the United Auto Workers to unionize grad student instructors at New School. For years, the issue has waxed and waned with the change in composition of the Board. While it is unclear how the Board will ultimately vote on the petition, given the current political proclivities of a majority of the Board, and the Obama administration's supportive position, this may be the best shot organized labor has to organize this segment of the academic community. We will continue to monitor the progress of this issue and provide updates as events transpire.

New Report from Federal Government Addresses Black and White Student Achievement Gap

On September 24, 2015, the U.S. Department of Education's ("USDOE") National Center for Education Statistics ("NCES") published a report focusing on the achievement gap between Black-White students. A portion of the Executive Summary of the report found as follows (quoted):

On average, White students attended schools that were 9 percent Black while Black students attended schools that were 48 percent Black, indicating a large difference in average Black student density nationally. When the analysis examined variation in density by region and locale, the results showed that schools in the highest density category (60 percent to 100 percent Black students) were mostly located in the South and, to a lesser extent, the Midwest and tended to be in cities. The highest percentage of schools in the lowest density category were in rural areas.

A copy of the report is available at the following link: [School Composition and the Black–White Achievement Gap](#).

Statement of Interest Filed by DOJ in Case Involving Handcuffing of Elementary Students

The Department of Justice (“DOJ”) filed a Statement of Interest in a case pending in a Kentucky federal court involving two elementary school children, a third and fourth grader, who were handcuffed while at school after the students exhibited conduct arising out of their disabilities. Suit was brought pursuant to the Fourth and Fourth Amendments to the United States Constitution and Title II of the Americans with Disabilities Act (ADA). A statement of interest, which does not take a position on the merits of the case, was filed by the DOJ to provide the court with a framework within which the court should assess the claims. Confirming that the ADA does apply to the School Resource Officer’s (“SRO”) interactions with children with disabilities, the DOJ emphasized to the Court that though SROs can partner with schools to help maintain a safe environment, they risk “criminalizing school-related behavior and risk lasting and severe consequences for children, particularly children with disabilities.” The Department further confirmed that SRO’s should not handle routine disciplinary incidents that school officials should properly address.

Source: [DOJ](#)

Female Coaches file Title VII Gender Discrimination Suit

The former women’s hockey, softball and basketball coaches at University of Minnesota (“UM”) sued the school after their contracts were not renewed. The hockey coach had been with UM since 1998 and had been the most successful women’s coach in NCAA history. She was asked to resign by UM’s new athletic director for budgetary reasons, and she refused but was willing to take a pay cut. Her contract was not renewed. The softball coach had worked for UM for 10 years, and spoke out after the university failed to renew the hockey coach’s contract. The basketball coach had been there for five years and claimed the new athletic director treated her with hostility after she was the keynote speaker for a LGBT event on campus. The Complaint filed in federal court alleges among other things, unequal treatment compared to the male coaches, hostile work environment and sexual orientation discrimination under Minnesota human rights and whistleblower statutes, the Equal Pay Act, Title VII and Title IX.

A copy of the complaint is available at: [UM Complaint](#).

Lighter Side: Aunt sues her 8 year old nephew for hug-related injuries

A New York woman recently sued her eight year old nephew, seeking damages in the amount of \$127, 000, for injuries she sustained when he hugged her at his birthday party. According to the Plaintiff, her fifty-pound nephew broke her wrist when he hugged her and knocked her down, saying, “Auntie Jen, I love you”. The jury found in favor of the nephew, denying recovery to the Plaintiff.

Source: [Washington Post](#)

Firm News

Robert J. Sniffen presented "Title VII and FCRA Trends" at the 41st Annual Public Employment Labor Relations Forum in Orlando.

Michael P. Spellman spoke at the Florida Society for Association Executives' Education Expo about the Department of Labor's proposed rules regulating overtime and the recent guidance issued about independent contractors.

Michael P. Spellman and **Jeffrey D. Slanker** co-authored *Employee Handbooks: Valuable Guides or Ticking Time Bombs?*, which was published in the Fall 2015 edition of Trial Advocate Quarterly.

Kenyetta Mullins authored an article entitled *Overtime Wages: Changes on the Horizon*, which was published in the September/October 2015 edition of Florida Society of Association Executives' SOURCE Magazine.