SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT
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Florida Appellate Court Allows Negligence Case Against Marjorie Stoneman Douglas High School Campus Monitors to Go Forward

The parents of a student killed in the tragic shooting at Marjory Stoneman Douglas High School in 2018 will be permitted to pursue a negligence claim against an unarmed campus monitor who saw the shooter arrive on campus. The complaint alleges that one of the monitor's duties was to radio a "Code Red" if he perceived that someone posed a threat as an active shooter. A "Code Red," the complaint alleges, would have caused an immediate lock down of all school buildings, and saved lives.

The Fourth District Court of Appeal concluded that the allegations of the complaint were sufficient to survive a motion to dismiss. The Court noted that the monitor had knowledge that the shooter had been previously identified as dangerous and saw him arrive on campus with a rifle case, but did not call for a "Code Red." The Court held that these allegations "can constitute conscious and intentional indifference to the consequences of [the monitor's] actions …"

To read more click here and here

Federal Appeals Court Holds School District Violated Student's First Amendment Rights

The U.S. Court of Appeals for the Third Circuit recently ruled that a Pennsylvania school district violated a high school student's First Amendment rights when it dismissed her from her cheerleading squad after using the F-word on the student's Snapchat account.

The student, upset that she did not make the varsity cheerleading squad, posted a photograph of herself and a friend, their middle fingers extended, that contained the caption "F--- school f--- softball f--- cheer f--- everything." When her cheerleading coaches found out about the message, they kicked the student off the junior varsity squad for violating team and school rules.

In its decision, the Court upheld the district court's ruling that the message – posted while off-campus and on a weekend – was protected by the First Amendment, and concluded that the U.S. Supreme Court decision *Tinker v. Des Moines Independent Community School District* does not apply to off-campus speech.

The case is *B.L. v. Mahanoy Area Sch. Dist., 964 F.3d 170 (3d Cir. Jun. 30, 2020)*

To read more click here

U.S. Supreme Court Extends Ministerial Exception

In a case that has important implication for religious schools, on July 8, 2020, the U.S. Supreme Court issued the opinion in the combined cases of *Our Lady of Guadalupe School v. Morriessey-Berru* and *St. James School v. Biel*. The Court addressed whether the ministerial exception should

extend to employees who do not hold the title "minister" (or something similar), or the expertise in religious education. In a seven to two decision, the Court said, yes, it does. The ministerial exception, developed pursuant to the First Amendment, insulates a religious institution from employment discrimination claims arising from actions related to its "ministers." In *Hossana-Tabor Evangelical Lutheran Church and School v EEOC*, 565 U.S. 171 (2012), the Court helped define the ministerial exception, but did not expressly declare that the exception applied to those employees who do not carry a revered title or hold religious degrees. However, in this current case, the Court made it abundantly clear that any individual who is charged with the "responsibility of educating and forming students in the faith" of the employing religious organization is subject to the ministerial exception. It does not matter the title, but rather what the employee does to determine whether the courts can interfere with a religious organization's decisions.

To read this decision, please refer here.

Supreme Court to Decide 'Nominal Damages' Issue that Often Arises in the Context of School Law Suits

Earlier this month, the Supreme Court of the United States granted review of *Uzuegbunam v. Preczewski*. In this case the Court will decide whether a government agency's change to an allegedly unconstitutional policy is enough to make a lawsuit challenging said policy moot when that plaintiff is only seeking nominal damages.

In *Uzuegbunam*, students challenged a public college's policy limiting free expression to designated "free speech zones." During the pendency of the case, the college amended its speech zone policy and asked the court to dismiss the suit as moot. The court did. The U.S. Court of Appeals for the 11th Circuit, in Atlanta, upheld the finding that the students' case was moot because their claim for nominal damages would not "have a practical effect on the parties' rights or obligations"

The Students appealed to the Supreme Court and will argue that nominal damages are an important basis for pursuing civil rights claims. Circuit courts are spilt on this issue. For instance, the Tenth Circuit has allowed a student's lawsuit to go forward based on nominal damages.

To read more about the case, click here.

Supreme Court May Resolve Title IX Circuit Split

Two former Michigan State University students have asked the United States Supreme Court to solve a circuit spilt in federal appellate courts regarding colleges and whether they should be held liable when sexual harassment complainants experience further harm after filing complaints.

In December 2019, the Sixth Circuit Court of Appeals held that Michigan State University could not be held liable in such a situation because the plaintiff could not prove "further actionable sexual harassment" even though she did experience further mental health challenges. The petition for certiorari asks the Court to decide whether colleges can be held responsible for failing to address students' "vulnerability" to sexual misconduct, or if preventable sexual misconduct must actually occur for colleges to be found in violation of Title IX.

Currently, both the Eighth and Sixth Circuits hold that alleged victims must "prove additional, post-notice sexual harassment in order to state a claim for damages under Title IX.

To read the petition, click here.

Federal Government Supports Idaho Law Prohibiting Transgender Athletes from Participating on Female Sports Teams

With the enactment of House Bill 500, the Fairness in Women's Sports Act ("Act"), on March 30, 2020, Idaho became the first state to prohibit student athletes at the high school and college level from participating in female sports if they are biologically male. On April 15, 2020, Lindsay Hecox, a transgender student who is biologically male, filed suit, arguing that the Act was in violation of the Constitution and Title IX. In a recent statement of interest filed by the U.S. Department of Justice ("DOJ") in this case, the federal government has voiced its support for the Act, asserting that the Act does not violate the Equal Protection Clause

Specifically, the DOJ made repeated reference to *Clark ex rel. Clark v. Arizona Interscholastic Association*, a decision by the 9th Circuit Court of Appeals, which held that males could be prohibited from participating in female sports without violating the Constitution's Equal Protection Clause, and reiterated the 9th Circuit's determination that the government had a legitimate interest in promoting female athletics programs.

To read the statement, please go here.

The Lighter Side: Work from Home Hazards.
Scottish MP's Cat Interrupts Parliamentary Zoom Meeting

Scottish National Party ("SNP") MP, John Nicolson's cat had *purrfect* timing during a committee debate earlier this month. The MP was in the middle of asking about the use of subtitles on children's TV during a meeting of the Digital, Culture, Media and Sport Committees when a tail popped up before him. The MP's cat, Rojo, not only brought the debate to a temporary halt but brought some laughs as well.

To watch the video, click here.

Firm News

Sniffen & Spellman, P.A. is proud to be recognized in the Martindale-Hubbell's Bar Register of Preeminent Lawyers™. The Bar Register is a guide to the legal community's most eminent professionals.

Jeff Slanker has been admitted into the First District Appellate American Inn of Court as a Barrister Private member. The mission of the Inn is to inspire the legal community to advance the rule of law by achieving the highest level of professionalism through example, education, and mentoring. The First District Appellate American Inn was founded in 2008 and is specifically focused on appellate practice. The Inn's membership consists of a mixture of approximately 70 members, including judges, professors, lawyers, and law students from Florida State University, Florida Coastal, and the University of Florida.

Supervisor’s alleged anti-Cuban comments leads to employee attempting suicide in the workplace and lawsuit in Fernandez v. Trees, Inc. Court rules supervisor’s alleged comments were “severe or pervasive” enough for hostile work environment claim. **Elmer Ignacio** with the Firm delved into the case for HRLaws' Labor and Employment Law Letter subscribers.