SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT

March 2014

School Policy Restricting Male Basketball Players' Hair Length Violates Title IX

In Hayden v. Greensburg Community School Corporation (Case No. 13-1757), the parents of a high school student filed a lawsuit under Title IX of the Education Amendments Act of 1972 ("Title IX") challenging a school policy which required boys to cut their hair short in order to participate in interscholastic basketball. Title IX protects individuals in federally funded education programs or activities from sex-based discrimination. In Hayden, Plaintiffs argued as follows: (1) the hair-length policy arbitrarily intrudes upon their son's liberty interest in choosing his own hair length, and thus violates his right to substantive due process; and (2) because the policy applies only to boys and not girls wishing to play basketball, the policy constitutes sex discrimination.

Ultimately, the Seventh Circuit Court of Appeals held in favor of Plaintiffs because the hair-length policy on its face treated boys and girls differently, and because the record evidence was devoid of any comparable grooming standards applied to girls' basketball. As such, Plaintiffs prevailed on their Title IX claim.

A copy of the Court's opinion is available at the following link: Hayden.

U.S. Supreme Court Declines Review in "I (Heart) Boobies" Bracelet Appeal

It appears that the lengthy litigation involving "I (Heart) Boobies" bracelets may finally be coming to an end as the U.S. Supreme Court denied a request for an appeal from the Easton Area School District. The bracelets at issue were worn by students in support of breast cancer awareness. Prior to the appeal to the U.S. Supreme Court, the Third Circuit Court of Appeals held that the bracelets were protected free speech and, as a result, the District was prohibited from denying students the right to wear the bracelets. The U.S. Supreme Court denied the District's Petition for Certiorari review on March 10, 2014.

A copy of the Third Circuit's underlying opinion is available at the following link: B.H. v. Easton Area School District (Case No. 11-2067).

Source: Pocono Record.

Zero Tolerance Continues to Draw Criticism

As most educational professionals are aware, Florida has adopted a zero tolerance law (F.S. 1006.13) mandating that all public school districts adopt a zero tolerance policy. The application and enforcement of zero tolerance policies often draws the ire of students and parents and frequently draws media attention. Recently, Nona Willis Aronowitz of NBCNews published an in-depth article (titled, "School Spirit or Gang Signs? 'Zero Tolerance' Comes Under Fire") providing insight into the continued criticism of zero tolerance policies and raising concerns of racial discrepancies in the application of such policies.

In her article, Aronowitz highlights a situation involving a high school student from Mississippi who was suspended for allegedly holding up gang signs while posing for a picture with his science project. The picture was taken by his teacher. The student had a clean disciplinary history and earned As and Bs. While the student was ultimately returned to school, his parents have secured the services of the ACLU to look into their son's rights with respect to his permanent educational record.

In light of the U.S. Departments of Education and Justice recent dissemination of their joint discipline guidance package designed to "assist states, districts and schools in developing practices and strategies to enhance school climate, and ensure those policies and practices comply with federal law," it is likely that challenges to zero tolerance policies are on the horizon.

The Departments' joint press release and guidance discipline package are available at the following link: Press Release.

Federal Court Holds "Least Restrictive Environment" Not a Prerequisite for Tuition Reimbursement

A federal court in New York issued an opinion on March 11, 2014, which warrants consideration by special education professionals representing school districts. In C.L. v. Scarsdale Union Free School District (Case No. 12-1610-cv), the District denied C.L. a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act ("IDEA"). As a result, his parents sought tuition reimbursement for money they spent enrolling him in a specialized private school designed to educate children with learning disabilities. The parents ultimately prevailed on their FAPE claim but were denied tuition reimbursement because the private school placement was more restrictive than the available public school placement.

On appeal, the Court ruled in favor of the parents and awarded tuition reimbursement. The Court held as follows:

> When a public school district, however, denies a child with a disability a FAPE, a private placement is not inappropriate merely because the environment is more restrictive than the public school alternative. When a child is denied a FAPE, his parents may turn to an appropriate specialized private school designed to meet special needs, even if the school is more restrictive.

A copy of the Court's opinion is available at the following link: C.L.

Proposed Florida Legislation Grants Principals/Superintendents Authority to Designate Individuals to Carry Firearms on Campus

House Bill 753 continues to work its way through the Florida Legislature. The bill is designed to address school safety but contains controversial provisions, including one which grants principals and superintendents the ability to designate individuals to carry concealed firearms in school. Designated individuals are required to submit proof of statutorily-defined firearms training. HB 753 further provides as follows:

> [i]t is the intent of the Legislature to prevent violent crimes from occurring on school grounds. The Legislature acknowledges that the safekeeping of our students, teachers, and campuses is imperative. In addition, the Legislature's intent is not to mandate that a school have one or more designees as described in the amendments made by this act to s. 790.115, Florida Statutes; rather, the intent of the amendments is to allow the school principal or authorizing superintendent the opportunity to do so.

More information related to the proposed legislation is available at the following link: HB 573.

Student Activists File Title IX Complaints for Mishandling of Sexual Assault Investigations

Two federal complaints were filed against UC Berkeley by thirty-one current and former students alleging that campus administrators engaged in a long pattern of mishandling sexual assault investigations. The complaints allege that for several years Berkeley officials discouraged victims of assault from reporting the incidents, failed to inform them of their rights and engaged in a judicial process that favored assailants' rights over those of their victims. Universities that receive federal funding are required, pursuant to Title IX, to impartially investigate allegations of sexual assault, which is considered a form of gender discrimination. Berkeley joins a growing group of nationwide universities that have been targeted for Title IX complaints by student activists. That network of student activists is seeking changes in a culture, they say, that treats rape and sexual assault as a routine part of college life. A task force aimed at trying to combat campus sexual misconduct was recently created by President Obama.

Source: Los Angeles Times.

University Professor Prevails in Failure to Promote Lawsuit

Mike Adams, a Townhall columnist and professor at the University of North Carolina (Wilmington), recently prevailed in his failure to promote lawsuit following a jury trial against the University. Adams claimed he was denied a full professor promotion due to his religious views which were often expressed in his columns. The University plans to appeal the jury's decision.

Sources: University Herald; The Daily Tar Heel.

From the Lighter Side: Kids Say the Darndest Things

Kids say the darndest things. Unfortunately for Patrick Snay of Florida, his daughter's comments wound up costing him $80,000. Mr. Snay settled an age discrimination lawsuit against Gulliver Preparatory School. As part of the settlement, Mr. Snay executed a confidentiality agreement. He also received $80,000. Before he could cash in on his new found wealth, his daughter took to Facebook to brag and gloat about how she planned to spend some of his money. She stated as follows:

> "Mama and Papa Snay won the case against Gulliver. Gulliver is now officially paying for my vacation to Europe this summer. SUCK IT."

Gulliver's legal counsel learned of the Facebook post and likely caused Mr. Snay's daughter to cancel her European vacation plans. The Third District Court of Appeal held Mr. Snay violated the confidentiality agreement by disclosing the settlement to his daughter. The Court reasoned, "before the ink was dry on the agreement, and notwithstanding the clear language of section 13 mandating confidentiality, Snay violated the agreement by doing exactly what he had promised not to do. His daughter then did precisely what the confidentiality agreement was designed to prevent, advertising to the Gulliver community that Snay had been successful in his age discrimination and retaliation case against the school."

A copy of the Court's opinion is available at the following link: Snay.

Source: CNN.

Firm News

Lisa Barclay of **Sniffen & Spellman, P.A.** presented as a panelist speaker at "Mastering the Deposition: A Critical Skills Program" for Pincus Professional Education on March 21, 2014, in Miami, Florida.

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