



EDUCATION LAW ALERT August 2014

Eleventh Circuit Affirms Private Tuition Reimbursement to Parent in IDEA Case

In Blount County Board of Education v. Bownes (Case No. 13-11392), the Eleventh Circuit Court of Appeals affirmed an award of private tuition reimbursement to the parent of an autistic student (J.B.). In April of 2009, the District met with Early Intervention and J.B.'s mother to address transition issues for J.B. once he reached the age of three on October 27, 2009. At the meeting, the District offered three placement options for J.B. The parties were unable to reach an agreement on placement and scheduled a follow-up meeting in May of 2009. Prior to the follow-up meeting, J.B.'s mother independently located a private school and reserved a spot for J.B. in the event the District did not offer an appropriate placement.

During a meeting in May of 2009, the District offered the same placement options as it had in April of 2009. However, during the meeting, the District representative advised J.B.'s mother that the private school was an excellent placement option and, according to the Court's Order, "acted as though the meeting was finished." Before leaving, J.B.'s mother suggested that J.B. meet with speech and occupational therapists in the District once per month. Following the meeting, J.B.'s mother enrolled him in the private school and paid \$3,500.00 for tuition.

In August of 2009, J.B.'s mother met with the District again and confirmed that J.B. would be enrolled in private school for the 2009-2010 school year. The District made no additional offers of placement and reimbursement was not discussed. In October of 2009, still prior to J.B. turning three years old, the District met with J.B.'s mother and father to discuss J.B.'s IEP. The District agreed that the private school was an appropriate placement but reimbursement was again not discussed.

In May of 2010, J.B.'s parents notified the Board of their desire for an IEP meeting to address the 2010-20011 school year and requested reimbursement for tuition previously paid to J.B.'s private school. The District met internally without J.B.'s parents and decided to offer an IEP substantially similar to the private program. J.B.'s parents declined the District's offer, informed the District that J.B. would remain in private school, and requested tuition reimbursement. The District rejected the request for reimbursement.

At an administrative hearing, the hearing officer found that the District deprived J.B. of a free appropriate public education ("FAPE") and consented to J.B.'s placement at his private school. As a result, the District was ordered to reimburse J.B.'s parent private school tuition from October 7, 2009, through July 10, 2010, plus mileage. A Federal district court upheld the hearing officer's decision in favor of the parents.

On appeal to the Eleventh Circuit, the District argued that J.B.'s parents failed to seek reimbursement at the October of 2009 meeting and, therefore, failed to satisfy the IDEA's requirements pertaining to unilateral private school placement and reimbursement requests. The Court rejected this argument and held that the District acquiesced to J.B.'s placement in private school. The District also argued that J.B.'s placement in private school and failure of his mother to alert the District of her intent to seek reimbursement deprived it of an opportunity to address her concerns. The Court disagreed with the District and held that the District consented to J.B.'s placement in private school. The Court also reasoned that J.B.'s parents had no duty to notify the District that they planned to seek reimbursement.

Finally, the Court stated, "the [IDEA] imposes a duty on the [District] to offer a free appropriate education at the outset, instead of waiting to see if a parent will seek reimbursement for a private placement."

A copy of the Eleventh Circuit's opinion is available at the following link: [Blount](#)

Ninth Circuit Holds School District Not Required Under the ADA to Modify Bleachers for Wheelchair Spectator, and Football Game Social Experience is Not a Public Program

On July 25, 2014, the Ninth Circuit Court of Appeals entered summary judgment in favor of the Lindsay Unified School District (California) and held that "Title II of the Americans with Disabilities Act does not require a public entity to structurally alter public seating at a high school football field, where the seating was constructed prior to the ADA's enactment, and the school district provides program access to individuals who use wheelchairs." Daubert v. Lindsay Unified School District, Case No. 12-16252.

The bleachers in question were constructed at Lindsay High School in 1971 and were never modified. The ADA only requires that construction commenced after January 26, 1992, be accessible to and usable by disabled individuals. The District admitted that the bleachers lacked wheelchair access or any floor space for the placement of a wheelchair. However, the District provided other locations at the football stadium for spectators in wheelchairs to view football games, including the pavement and grass located in each end zone, the corners of each end zone, and certain sideline areas.

Plaintiff, who was confined to a wheelchair, argued that he was prohibited from enjoying Lindsay High School football games, because the bleachers in question were not accessible, he was provided an inferior view in other accessible locations, and he was denied the ability to sit with other fans in the inaccessible bleachers. Plaintiff argued that the ability to sit in the inaccessible bleachers was a "social experience" that constituted a public program to which he was entitled access. Ultimately, the Court ruled that the District had no responsibility to modify the bleachers since they were constructed in 1971.

With respect to the "social experience" argument, the Court again sided with the District and held as follows:

"Here, the School District offers football games as a public program, and the bleachers are one part of the facility in which that program takes place. While sitting in the [inaccessible bleachers] may offer a particular social experience, this experience is merely incidental to the program the government offers (i.e., football games) and providing this experience is not fairly characterized as 'a normal function of a government entity.'"

A copy of the Ninth Circuit's opinion is available at the following link: [Daubert](#)

Schools Start Banning Bake Sales Due to Federal Nutritional Standards

School districts across the United States are putting a halt to traditional bake sales due to Federal regulations addressing nutrition in schools. The [Healthy Hunger-Free Kids Act \("Act"\)](#) was enacted in 2010 and took effect in July of 2014. The Act addresses, among other areas, policy for the United States Department of Agriculture's ("USDA") core child nutrition programs. The Act further requires that school districts develop and adopt school wellness policies that promote student health and address childhood obesity. The curb in bake sales is in response to the Act's specific nutrition requirements applicable to all food and beverages sold on school grounds.

More information regarding mandated school district wellness policies is available at the following link: [USDA](#)

Source: [The Wall Street Journal](#)

U.S. Department of Education Publishes Proposed Clery Act Amendments

The U.S. Department of Education ("US DOE") recently closed the public comment period addressing its proposed amendments to the Clery Act. As most higher education administrators and attorneys are aware, the Clery Act mandates that higher education institutions adhere to certain campus safety and security-related requirements. According to US DOE's Notice of Proposed Rulemaking, "[t]he Secretary proposes to amend the Student Assistance General Provisions regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement the changes made to the Clery Act by the Violence Against Women Reauthorization Act of 2013 (VAWA)."

Proposed revisions identified in the Notice of Proposed Rulemaking include, among other provisions, the following:

Add and define the terms "Clery Geography," "dating violence," "domestic violence," "Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program (FBI's UCR program)," "hate crime," "Hierarchy Rule," "programs to prevent dating violence, domestic violence, sexual assault, and stalking," "sexual assault," and "stalking,"

Require institutions to address in their annual security reports their current policies concerning campus law enforcement, including the jurisdiction of security personnel, as well as any agreements, such as written memoranda of understanding between the institution and those police agencies, for the investigation of alleged criminal offenses;

Require institutions to address in their annual security reports their policies to encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies when the victim of a crime elects to or is unable to make such a report; and

Require institutions to provide written information to victims about the procedures that one should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including several other pieces of additional information.

The Notice of Proposed Rulemaking, which includes a summary of proposed changes, is available at the following link: [Notice of Proposed Rulemaking](#)

OCR Investigating California School District Based on Complaint that Women's Softball Fields and Men's Baseball Fields are Not Treated Equally

While the current media attention addressing Title IX lawsuits and investigations focuses primarily on sexual assault cases, there is a continued rise in Title IX lawsuits and investigations in K-12 school districts. The William S. Hart Union High School District is currently being investigated based on allegations that the Canyon High School women's softball fields are treated less favorably than the men's baseball field. The complaint purportedly alleges that the women's softball shed that houses equipment is littered with holes due to rats to roam around team gear and the field itself is filled with holes and dirt allowing to substandard irrigation. The complaint further contends that the school district responds quicker when issues involve the men's football and baseball fields.

Source: [KHTS AM 1220](#)

Free-Speech Limits Imposed by Universities and Colleges Challenged by Nationwide Lawsuits

In a nationwide campaign, a Philadelphia-based nonprofit foundation called FIRE ("Foundation for Individual Rights in Education") is coordinating legal actions around the country challenging allegedly unconstitutional campus policies restricting free speech. Three lawsuits were filed recently accusing three state universities and a community college of limiting free speech of students and faculty. The cases involve a student who was told he would be kicked off campus unless he stayed within a designated area while seeking signatures for a petition, t-shirt designs for a student organization, and a faculty blog. FIRE claims there are more lawsuits in the waiting, and cases are to be filed in each of the eleven Federal circuit courts. FIRE was founded in 1999 and has focused its efforts on resolving specific disputes and embarrassing universities into changing student conduct codes by publicizing incidents it views as egregious. FIRE alleges that 58% of 427 colleges it studied last year have unconstitutional or objectionable speech codes.

Source: [USA Today](#)

Schools Prepare for Influx of Immigrant Students

As the 2014-2015 school year commences, many school districts across the country are preparing for a phenomenon that has continued to grow over the years. Children from outside of the United States will flock here to receive a free public education. Federal law entitles all children regardless of immigration status to a free public education. Although educating immigrant students is nothing new, the large number of minors unaccompanied by adult guardians has added a complicated twist.

Miami-Dade County Superintendent Alberto Carvalho says the financial effect the new students will have on a school district is still unknown. Miami-Dade County is one of the school districts that requested additional funding. It expects a large increase in its immigrant student population with many of those students coming from Central America. The additional funds help provide for items such as health screenings and social and psychological counseling for students struggling with adapting to a new environment. Public schools in Georgia have gone so far as to create academies where the immigrant students learn English and basic technology skills. For many, it is their first time seeing a computer.

Source: [USA Today](#)

From the Lighter Side: Honors Teacher Canned for Trashing Students on Social Media

Suburban Philadelphia honors English teacher Natalie Munroe was doing fine in her career until she decided to start venting on her blog about her students. Ms. Munroe reportedly used words to describe her students such as "jerk," "rat-like," "dunderhead," "frightfully dim," and "whiny simpering grade-grubber with an unrealistically high perception of own ability level." She also said "that parents 'were breeding a disgusting brood of insolent, unappreciative, selfish brats.'"

The school was not thrilled when word got out through students' social media postings and drew the attention of mainstream media like CBS, ABC, NBC, CNN, Fox News, etc. Ms. Munroe was initially suspended and, when she returned, students were allowed to opt out of her classes, which they did, leaving her classes too small to be viable. The school system then fired her, and she sued claiming retaliation for exercising her First Amendment rights.

A Federal judge in Philadelphia granted the school system's summary judgment motion and ruled that her blog was primarily personal, and her statements about the kids and parents were not protected because the blog contained "gratuitously demeaning and insulting language inextricably intertwined with her occasional discussions of public issues."

A copy of the Court's opinion is available at the following link: [Munroe v. Central Bucks School District](#)

From the Unbelievable Side: Oklahoma Teacher Shows Up Intoxicated and Wearing No Pants on First Day of School

A teacher in Oklahoma is accused of – wait for it – showing up to work on the first day of school intoxicated and wearing no pants. According to [ABC News](#), the 49-year-old high school female teacher was found by an assistant principal in her classroom not wearing any pants and smelling of alcohol. The teacher subsequently confessed to drinking orange juice mixed with vodka that morning on her way to school. Police officers also found vodka in her car that was parked in the school parking lot.

Firm News

Robert J. Sniffen and **Michael P. Spellman** have again been selected by their peers for inclusion in the 2015 edition of *The Best Lawyers in America*® in the practice areas of Employment Law - Management, Labor Law - Management and Litigation - Labor & Employment. Selection to *Best Lawyers* is based on an exhaustive peer-review survey. Over 52,000 leading attorneys cast more than 5.5 million votes to the legal abilities of other lawyers in their practice areas.

Robert J. Sniffen and **Michael P. Spellman** were also selected by *Super Lawyers*® as two of the top attorneys in Labor and Employment Law. *Super Lawyers* magazine names attorneys in each state who received the highest ranking through peer nominations, evaluations and third party research. Five percent of the total lawyers in the state are selected for inclusion in *Super Lawyers*.

Terry J. Harmon was recently nominated and accepted for membership in the **Florida School Board Attorneys Association**. The **Florida School Board Attorneys Association** is a statewide organization created as a collegial body for the attorneys representing Florida's 67 school districts. The organization meets quarterly to arrange for speakers to address the Association on current issues affecting school boards and to provide a forum for the exchange of ideas and information amongst the members.

On July 30, 2014, **Terry J. Harmon** presented on topics of child abuse reporting, the importance of documentation, social media, and cyberbullying, to school district administrators from Putnam County, as part of professional development for members of the [Florida Association of School Administrators \(FASA\)](#).

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.