SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT
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Government Ruling Determines N.J. School District Wrong to Fire Teacher for Giving Bible to Student

Walt Tutka was working as a substitute teacher in New Jersey when he was fired in October 2013 for giving a Bible to a struggling student. Tutka said to a student who was last in line, "The first shall be the last and the last shall be the first." The student then repeatedly asked where the line was from, and Tutka told him it came from the Bible. When the student told Tutka he did not have a Bible, Tutka gave the student his Bible. Tutka was thereafter fired for violating school policy on distributing religious materials to students. Tutka filed a complaint with the EEOC alleging religious discrimination and retaliation.

The EEOC sided with Tutka finding that there was reasonable cause to believe Tutka was discriminated against and that religion and retaliation played a factor in his firing. The EEOC ordered the school district to join with Tutka and itself to find an "acceptable conciliation agreement" to eliminate its unlawful employment practices, or face other court enforced alternatives.

Source: The Warren Reporter

Student's Off-Campus Rap Song Protected by First Amendment

The U.S. Court of Appeals for the Fifth Circuit recently ruled in Bell v. Itawamba County School Board, et al, Case No. 12-60264, that a high school student's vulgar and violent rap song is protected by the First Amendment. The Fifth Circuit reversed the trial court's decision granting summary judgment in favor of the school board because, in large part, the song did not substantially disrupt school functions.

Taylor Bell wrote and recorded the rap song in December 2010 when he was a senior at Itawamba Agricultural High School in Mississippi after several of his female friends complained that two male coaches at the school had inappropriately touched them and made explicit comments. Bell said he felt compelled to write the song because it would help solve the teacher-on-student sexual harassment problem at his school if someone listened. The song was composed, recorded and posted on the Internet while Bell was off-campus during non-school hours.

In the suit, filed by Bell and his mother after the school suspended him, Bell claimed his freedom of speech was violated, among other things. The Fifth Circuit agreed. The higher court partially based its decision on the fact that none of the involved actions occurred on campus, as Bell used a professional studio unaffiliated with the school to record the song and then posted the song on Facebook and YouTube using his personal computer at home.

Source: Education Week

The Fifth Circuit's Opinion can be found here: Bell v. Itawamba County School Board, et al

School District Not Responsible for Student's Death on Teacher's Property

The U.S. Court of Appeals for the Fifth Circuit in Pierce v. Hearne Independent School District, et al, Case No. 14-50788, recently affirmed a federal district court's dismissal of a case involving the death of a Texas high school student. The parents of De'Jon Pierce sued the Hearne Independent School District, school principal Anthony McGill and agriculture teacher Carl Trojacek after their son tragically died in an all-terrain vehicle ("ATV") accident on the property of Trojacek. In the suit, the parents alleged students were allowed to work on Trojacek's farm without parental permission and further claimed the Defendants violated Pierce's 14th Amendment right to substantive due process.

Pierce was assigned by the school to work at the farm and was riding the ATV owned by Trojacek with another student when he crashed into a tree. Trojacek, with the permission of Principal McGill, commonly withdrew students from school to work on his farm as part of their coursework. The Fifth Circuit determined that, although Trojacek may have been negligent by instructing Pierce to drive the ATV, none of the Defendants' actions constituted a complete disregard for human life or an indifference to a significant risk of death. The court also ruled that Texas state law gave the school district immunity from the tort claims pleaded in the lawsuit.

Source: Education Week
The Fifth Circuit's Opinion can be found here: Pierce v. Hearne Independent School District, et al

ACLU Says Transgender Restroom Policy Is Discriminatory

The American Civil Liberties Union ("ACLU") recently filed a federal complaint on behalf of Gavin Grimm against Gloucester County Public Schools ("GCPS"). Grimm is a transgender student at Gloucester High School who is now recognized as a male. The complaint alleges GCPS's new policy limiting restroom facilities available to transgender students is discriminatory. The new policy requires transgender students to only use single-stall bathrooms or facilities assigned to their biological gender.

A chief concern of the ACLU is that such a policy will make transgender students feel alienated and isolated and discriminates on the basis of sex. Under the old policy, Grimm was allowed to

use male restrooms, and the ACLU argues there were no complaints before the adoption of the new policy. Leaders of groups such as Campus Crusade for Christ and Focus on the Family praised the new policy but it may be a Title IX violation after all is said and done.

Source: NSBA Legal Clips

New Federal Guidelines Highlight Civil Rights of English Language Learners

On January 7, 2015, the U.S. Department of Education's Office for Civil Rights and the U.S. Department of Justice's Civil Rights Division issued a joint guidance concerning public schools and their legal obligations to English-language learners ("EL students") under Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, and related federal statutes and regulations. Among other things, the joint guidance addresses identifying and assessing EL students; avoiding unnecessary segregation of EL students; ensuring meaningful communication with the parents of EL students; staffing and monitoring the effectiveness of programs; and providing EL students with meaningful access to all curricular and extracurricular programs.

Source: The Washington Post

Harvard Law School Found in Violation of Title IX, Agrees to Remedy Sexual Harassment, including Sexual Assault of Students

During the final days of 2014, the U.S. Department of Education's Office for Civil Rights ("OCR") completed its investigation of allegations that Harvard University's School of Law violated Title IX of the Education Amendments of 1972 by not providing and implementing grievance policies and procedures to insure the prompt and equitable resolution of sexual harassment complaints. As a result, the Law School entered into a resolution agreement with the OCR, stipulating that the OCR would oversee the school's implementation of measures to be taken concerning, among other things, posting the University's policies and procedures, providing contact information for each Title IX coordinator, utilizing the preponderance of the evidence standard, and providing Title IX training.

Source: U.S. Department of Education

Columbia University Investigated for Title IX and Title II Violations

Stemming from a complaint filed by a group of students and alumni last April, the U.S. Department of Education announced that its Office of Civil Rights ("OCR") is conducting two separate investigations of Columbia University. The school is being probed for Title IX violations related to sexual assault and Title II violations involving alleged discrimination against persons with disabilities. The complaint includes approximately 28 names, including one female student who threatened to carry her mattress around campus until the school removes the alleged man that raped her on the mattress. A Columbia spokeswoman said the school updated its

policies and has plans to make additional changes to prevent sexual assault and other gender-based misconduct.

Source: University Herald

School District Settles Parent's First Amendment Suit

The Addison Rutland Supervisory Union ("ARSU") will pay Marcel Cyr $147,500 after the parties agreed on a settlement stemming from a lawsuit filed on behalf of Cyr by the American Civil Liberties Union ("ACLU"). The ACLU sued ARSU and claimed Cyr's First Amendment rights had been violated after Cyr was served no-trespass orders and banned from attending school board meetings or entering schools within the district. Cyr was known for being an intimidating figure because of his size, loud voice and the harsh comments he would make to school officials about his son's education.

ARSU Superintendent Ron Ryan said his school district would adhere to the court's advice in finding alternative measures to protect people in attendance at the school board meetings, such as hiring a police officer to stand watch. Although, Ryan added that he would rather lose a lawsuit than risk the safety of the people in his school district. The parties reached the settlement after a federal district court ruled Cyr's freedom of speech was violated by ARSU.

Source: NSBA Legal Clips

Firm News

On January 14, 2015, **Mark K. Logan**, along with a panel of veterinary practice owners, addressed the University of Florida Veterinary students on the topic of "negotiating a first employment contract" on behalf of the Florida Veterinary Medical Association and the UF Student Chapter of the American Veterinary Medical Association.

On January 29, 2015, **Hetal H. Desai** presented on Employment Law updates to the Florida Association of Self Insureds in Orlando, Florida.

Robert J. Sniffen and **Jeffrey D. Slanker** coauthored an article entitled "Nassar's Unclear Effect: 'But-for' Causation and the Title VII Retaliation Landscape" which was published in the January 2015 edition of *For the Defense*.

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