

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT February 2016

Title IX Lawsuit Against the University of Tennessee Mentions Peyton Manning

Just days after Florida State University settled a Title IX lawsuit concerning Jameis Winston, six Plaintiffs filed a Title IX lawsuit against the University of Tennessee, referencing allegations from 1996 concerning Peyton Manning, who attended the university between 1994 and 1997. While the Plaintiffs' attorney admits that references to Peyton Manning are only a "backdrop," the Plaintiffs claim that the university fostered a hostile sexual environment and culture and was deliberately indifferent to allegations of sexual assault. The lawsuit centers around five alleged rapes that occurred between 2013 and 2015.

More information at: [CNN](#)

Second Circuit Ruled that Failure to Address Bullying in Student's IEP Violated FAPE

L.K., a disabled elementary student who received special education services from a public school run by the New York City Department of Education ("NYCDE"), was bullied on a near daily basis. On several occasions, L.K.'s parents attempted to raise the issue of bullying with school officials; they wrote letters to teachers and administrators, but received no response. During an individualized education plan ("IEP") meeting, L.K.'s parents were not permitted to revisit their concerns about bullying, and were told that it was inappropriate to consider the topic in the development of L.K.'s IEP. Two days later, L.K.'s parents notified NYCDE that they were rejecting L.K.'s IEP, and would be enrolling her in a private school. Subsequently, L.K.'s filed an administrative complaint seeking tuition reimbursement from NYCDE, and alleging that NYCDE violated the Individual with Disabilities Education Act ("IDEA") by failing to provide a free appropriate public education ("FAPE") to L.K. The parents lost at the administrative level, then filed an appeal with a federal district court, which ultimately held that NYCDE violated the IDEA by refusing to allow L.K.'s parents to discuss bullying in the development of the IEP. On appeal with the Second Circuit, the court of appeals affirmed the district court's decision, ruling that NYCDE "denied L.K. a FAPE by violating her parents' procedural right to participate in the development of her IEP."

More information available at: [Legal Clips](#)

Proposed Rule Seeks Equity for Students with Disabilities

The United States Department of Education ("DOE") has set out to address the disparity of discipline in the treatment of students of color with disabilities. To this end, the DOE announced its proposed Equity in IDEA rule. Data submitted under the IDEA revealed disparities in the identification and discipline of students with disabilities. By way of example, for three

consecutive years, 876 school districts gave African American students with disabilities short-term or out-of-school suspension at least twice as often as all other students with disabilities.

The proposed Equity in IDEA rule would require states to implement a standard approach for comparing racial and ethnic groups and determining when a disparity must be considered significant. Once a significant disparity has been identified, the district will have to set aside 15% of its IDEA Part B funds, for comprehensive coordinated early intervening services. The proposed rule would also provide for flexibility in the use of the amount set aside, allowing those funds to be utilized for students regardless of whether or not they have a disability.

More information available at: [DOE](#)

Supreme Court Looks to the DOE Concerning the Exhaustion of Remedies for Claims brought under the ADA or Rehabilitation Act

Parents of a 5-year old student sued their daughter's school seeking damages under the Americans with Disabilities Act of 1990 ("ADA") and the Rehabilitation Act of 1973 after the school denied her the continued use of a doctor-prescribed service dog in class. The *Fry v. Napoleon Community Schools* case is now before the Supreme Court.

By way of background, in 1986, Congress enacted the Handicapped Children's Protection Act ("HCPA"), which in response to an earlier U.S. Supreme Court case, made it clear that students with disabilities could pursue their rights not only under the IDEA, but also under other laws, such as the Rehabilitation Act. However, the HCPA requires that if the claims are also brought under the IDEA, then the family must first exhaust state administrative rules under the IDEA.

When Frye sued her school, the federal district court held that a student with a disability who brings a claim under the ADA or the Rehabilitation Act must first exhaust remedies under the Individuals with Disabilities Education Act ("IDEA") "when the injuries alleged can be remedied through IDEA procedures, or when the injuries relate to the specific substantive protections of the IDEA." On appeal, the Sixth Circuit affirmed the district court's ruling. While six other federal circuits have reached a similar outcome, the 9th Circuit has ruled that the critical inquiry is whether the plaintiff actually sought relief available under the IDEA, not whether a plaintiff could have sought relief.

The Supreme Court recently asked the U.S. solicitor general to file a brief concerning the following issue: whether the HCPA requires exhaustion in a suit brought under the ADA or the Rehabilitation Act where the plaintiff seeks damages (which are unavailable under the IDEA).

More information available at: [Education Week](#)

EEOC Releases 2015 Fiscal Year Enforcement and Litigation Data

The Equal Employment Opportunity Commission ("EEOC") recently released its litigation data for the 2015 fiscal year, which began on October 1, 2014 and ended on September 30, 2015. During this period, 89,385 charges of workplace discrimination were filed with the agency. The

most commonly filed charges were those based on retaliation (44.5%), followed by race (34.7%) and disability (30.2%).

More information available at: EEOC.gov

Fed-Up Parents Hit Public School System with Lawsuit Over Controversial Islam Assignment That Led to Failing Grades for Daughter

A Maryland school district has been hit with a federal lawsuit by a couple claiming that their daughter was forced to complete homework assignments endorsing Islam over other religions. One particularly significant homework assignment required students to write out an Islamic creed that, when recited by non-Muslims, signifies conversion to Islam.

The parents demanded the school, La Plata High School, allow her daughter to complete alternative assignments, to no avail. The school instead stated that the daughter would receive failing grades if she did not complete the required assignments.

The couple is working with the Thomas More Law Center to pursue the civil rights complaint against what they call “Islamic indoctrination.”

For further reading, visit: theblaze.com

From the Lighter Side: Inmate Sues Powerball Winners for their Award

After winning a third of the 1.6 billion dollar Powerball jackpot, the Robinson family faces a lawsuit filed by Jonathan Lee Riches, a prisoner who claims he is entitled to half of their portion of the award. Mr. Riches, who is also known as Jihadi Schitz, claims that he sent Tiffany Robinson twenty dollars from his prison trust fund and encouraged her to have her father use it to buy the winning lottery ticket. Mr. Riches’ handwritten complaint also alleges that Ms. Robinson promised to “murry” him and live on an island full of milk and honey.

Source: Forbes.com

Firm News

Jeffrey D. Slanker and Monna Lea Bryant published an article in the February 2016 edition of the *Checkoff*, a publication of the Florida Bar’s Labor and Employment law section. The article focuses on several recent Eleventh Circuit rulings, some relating to such issues as First Amendment protection and the scope of authority of arbitrators. The article can be found at the following link: [The Florida Bar - Labor & Employment Law Section](#)

On February 11, 2016, **Sniffen & Spellman, P.A.** co-produced the inaugural Florida K-12 Administrators Training in Orlando, Florida, with Stetson University College of Law and the Education Law Association. **Terry J. Harmon** and **Monna Lea Bryant** spoke at the conference on legal issues in education in the areas of Exceptional Student Education, Employment, and Social Media. We look forward to co-producing the event again in the near future. Stay tuned!

Todd C. Hunter, Jr. published an article in the January/February 2016 edition of the Florida Society of Association Executives' *SOURCE* magazine entitled "Nonprofit Boards: How to Legally Balance Evolving Communication Strategies."

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