

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT October 2016

National Labor Relations Board Creates New Protected Class of Graduate Assistant Supervisors

The National Labor Relations Board (“NLRB”) recently ruled that students working as teaching and research assistants at private universities or colleges are statutory employees under the National Labor Relations Act (“NLRA”). This ruling grants teaching and research assistants the right to organize and form unions. Prior to this ruling, graduate students could not organize into unions on the grounds that their relationship with the universities was primarily educational.

The NLRB, however, held that nothing in the NLRA prohibits teaching assistants from being treated like employee and in so doing, clarified that this category of individuals has the right to organize and engage in collective bargaining. The NLRB reasoned that there is no exception carved out of the NLRA for workers with a primarily educational relationship to their employer. This decision could have far reaching ramifications for universities and colleges.

Read more [here](#).

SCOTUS Set To Hear Case on Special Education Student Rights

The Supreme Court of the United States has agreed to hear a case regarding an autistic student’s right to reimbursement of his private school tuition. The student, Andrew F., is attending private school because his parents were dissatisfied with the educational assistance provided by the public school he formerly attended.

Andrew’s parents claim that the public school failed to provide an appropriate education as required by the Individuals with Disabilities Act (“IDA”). Specifically, the parents allege the school failed to appropriately handle Andrew’s behavior issues, including head banging, falling to the floor, and taking off his clothes.

The case will provide the Supreme Court with a forum to discuss the schools’ requirements to comply with the standards of the IDA.

Read more [here](#).

Higher Education Trademark Disputes

South Texas College of Law recently changed its name to Houston College of Law and changed its colors to red and white. University of Houston, whose color scheme is also red and white, filed suit against South Texas. A federal judge granted a preliminary injunction, stopping South

Texas College of Law from using the Houston name pending the outcome of the case. The court found that using the Houston name could lead to confusion and would give South Texas a degree of credibility that had not earned.

This case comes just months after the Eleventh Circuit Court of Appeals affirmed the dismissal of a suit brought by that Florida International University (“FIU”) against Florida National University. FIU argued that the similarity between the names could lead to confusion. The Eleventh Circuit held that college applicants are sophisticated consumers who are unlikely to be confused by similarly sounding names.

Further, a Pennsylvania Baptist College changed its name to Summit University of Pennsylvania. Plaintiff, a bible college in Montanan called Summit University, brought suit. The Montana university also had its name trademarked for about five years around the time of the suit. Although Defendant attempted to couch its name in geographical terms, that has no significance in a trademark dispute. Defendant agreed to change its name.

Read more [here](#).

Education Guidance for the Every Student Succeeds Act

President Obama signed the Every Student Succeeds Act (“ESSA”) on December 10, 2015. This bipartisan act reauthorized the Elementary and Secondary Education Act (“ESEA”). On October 20, 2016, the U.S. Department of Education (“DOE”) issued non-binding guidance for schools to coordinate early learning for children from birth through third grade. The guidance encourages states and local governments to develop high-quality preschool, provide access to such preschool for all children regardless of zip code, support early learning educators, and coordinate services for children to enhance their ability to learn. Studies show that children who attend quality preschool such as Pre-K programs are less likely to require special education services in elementary and high school, and are more likely to succeed academically. A full copy of the DOE’s guidance can be found at:

Read more [here](#).

From the Lighter Side: Creepy Clown Threats are Making Kids Criminals Online

The nation’s newest and strangest trend – creepy clowns – is leading to a rise in online criminal activity by children. Reported sightings of these creepy clowns have resulted in school districts having to respond to threats of violence and in many cases, in arrests of parties involved.

The influx in criminal activity includes instances of children creating online clown accounts mimicking news reports and inciting fears of fellow students. Several children have received citations or even arrests for the online activity, which includes cyberbullying and making threats of violence.

Read more [here](#).

Firm News

On October 27, 2016, **Michael Spellman** presented an update on Police Civil Liability at the annual conference of the Florida Association of Police Advisors.

On October 21, 2016, **Lisa Fountain** gave a presentation titled “Recent Issues and Trends regarding Title VII and the Florida Civil Rights Act” at the 42nd Annual Public Employment Labor Relations Forum at the Rosen Shingle Creek resort in Orlando, Florida.

Terry J. Harmon presented at the Florida Capital Chapter of the Association of Legal Administrators’ seminar titled, “Gender Identity and the Law – An Update on Transgender and Gender Identity Issues in the Public and Private Sectors.” Presentation topics focused on gender identity and transgender legal issues in education and employment. The seminar was held October 13, 2016 at the Florida State University College of Law.

Hetal Desai McGuire completed the year long session for Leadership Florida and now is a proud member of Class XXXIV.

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.