

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT

May 2017

7th Circuit Transgender Student Bathroom Case **(Preliminary Injunction in Favor of Student Entered)**

On May 30, 2017, the 7th Circuit Court of Appeals in Whitaker v. Kenosha Unified School District No. 1 Board of Education, et al. (Case No. 16-3522) issued an Order affirming a lower court's entry of a preliminary injunction permitting a transgender male student to use the boys' bathroom pending the outcome of the case. Plaintiff is a 17-year-old high school senior. His pending lawsuit includes claims under Title IX of the Educational Amendments Act of 1972 and the Fourteenth Amendment's Equal Protection Clause.

In denying the School District's appeal of the lower court's entry of the preliminary injunction, the 7th Circuit stated, among other things, as follows:

The School District also argues that we should reverse the district court's decision to grant the preliminary injunction for two main reasons. First, it argues that the district court erred in finding that Ash had demonstrated a likelihood of success on the merits because transgender status is neither a protected class under Title IX nor is it entitled to heightened scrutiny. And, because the School District's policy has a rational basis, that is, the need to protect other students' privacy, Ash's claims fail as a matter of law. We reject these arguments because Ash has sufficiently demonstrated a likelihood of success on his Title IX claim under a sex-stereotyping theory. Further, because the policy's classification is based upon sex, he has also demonstrated that heightened scrutiny, and not rational basis, should apply to his Equal Protection Claim. The School District has not provided a genuine and exceedingly persuasive justification for the classification.

Second, the School District argues that the district court erred in finding that the harms to Ash outweighed the harms to the student population and their privacy interests. We disagree. The School District has failed to provide any evidence of how the preliminary injunction will harm it, or any of its students or parents. The harms identified by the School District are all speculative and based upon conjecture, whereas the harms to Ash are well-documented and supported by the record. As a consequence, we affirm the grant of preliminary injunctive relief.

A copy of the Order is available at the following link: [Whitaker](#).

A Decision on HB 7069 Still Looms

On the heels of closing out the 2017 Legislative Session, HB 7069 was approved. The wide-ranging bill covers numerous educational issues including, but not limited to, school uniforms, charter schools, graduation requirements, End of Course exams, teacher evaluations, school improvement plans, annual contracts, school board member site visits, HOPE schools, mandatory recess, virtual school, middle grades promotion, public playground use, sunscreen use, and approved absences for certain therapy needs. HB 7069 is currently in the hands of Governor Scott. All eyes are on whether he will approve or veto the legislation.

A copy of HB 7069 is available at the following link: [HB 7069](#).

Select Education-Related Legislation Other than HB 7069

While HB 7069 continues to draw all the attention, other education-related bills are also awaiting Governor Scott's decision. Select bills including the following:

- [HB 15](#) – addresses scholarships (Gardiner, Florida Tax Credit Program, and USAF scholarships).
- [SB 374](#) – adopts the “Florida Excellence in Higher Education Act of 2017,” substantially addresses Florida Community Colleges, and revises the functions of the Florida K-20 education system.
- [SB 436](#) – adopts the “Florida Student and School Personnel Religious Liberties Act.”
- [HB 989](#) – revises school district responsibilities related to the review and adoption of instructional materials.
- [HB 1109](#) – revises eligibility requirements for private school students who desire to participate in interscholastic and intrascholastic sports at public schools.

We will continue to monitor the legislation and let you know whether they are signed by Governor Scott.

Federal Bill Proposed Targeting Lunch-Shaming

Several federal lawmakers have proposed a bill to reduce or eliminate “lunch shaming.” The bill is meant to protect students who have unpaid school meal debts or whose parents cannot afford to pay for school lunches. The bill would require schools to communicate directly with parents about low school meal balances. It would further prohibit schools from requiring children to complete chores to pay for their meals or wear wristbands or hand-stamps to let their parents know their lunch money balance is low. It would also prohibit food from being thrown out once it's on a child's tray if it is discovered that the child cannot pay for the food. Critics of the bill point out that it would not eliminate the most pervasive form of “food shaming,” giving a child an alternative meal.

Read more [here](#).

USDA Issues New Guidance on Accommodation Disabilities in School Meal Programs

Accommodating students with disabilities in school meal programs is a frequent area of dispute under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, particularly involving students with life-threatening food allergies. On April 25, 2017, the United States Department of Agriculture (“USDA”) issued new guidance on accommodating students with disabilities in school meal programs. The guidance addresses the following subject matters:

- What is a Disability?
- Procedural Safeguards.
- Requesting a Modification.
- Making a Meal Modification.
- Reimbursement for Modified Meals.
- Accommodations to the Meal Service.
- Non-Disability Situations.

The guidance document should be reviewed by all 504 Coordinators, ESE staff, and those working in school food programs.

The guidance is available at the following link: [USDA](#).

Firm News

Join Us for the Sniffen & Spellman Lunch and Learn Seminar Series

This year Sniffen & Spellman is proud to offer quarterly lunch and learn seminars for our clients and friends to discuss and answer questions on important labor and employment and business liability issues. The seminars will be held at the Firm’s office at 123 North Monroe Street in Tallahassee. Lunch will be provided. Space is limited.

If you would like to attend a seminar, please contact Hannah McKinney at hmckinney@sniffenlaw.com or at 850-205-1996.

Tentative dates (topics to be announced later) for the rest of the 2017 series are as follows:

June 29

September 28

December 7

We hope you can join us for lunch and a great discussion!

The Firm congratulates **Jeffrey D. Slanker** and **Robert J. Sniffen** on successfully arguing on behalf of the Florida Department of Corrections before the Florida First District Court of Appeals.

Read the opinion [here](#).

On May 17, **Kevin Kostelnik** spoke at a *Working Well* member event on “Health Promotion, Wellness Program Compliance, and the ADA.”

Kevin Kostelnik authored “The Final Frontier of Title III: The ADA and Internet Accessibility,” published in the May/June 2017 issue of the Florida Society of Association Executives’ *Source* magazine.

Robert J. Sniffen attended the DRI’s 40th Annual Employment and Labor Law Seminar May 17-19, 2017 in Nashville, Tennessee. The DRI Seminar is the preeminent educational and networking event for management-side labor and employment attorneys, in-house counsel, human resources professionals, and EPLI representatives.

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.