SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT
March 2018

Comprehensive New Law Addresses Public and School Safety

Florida school boards, superintendents, and school staff are strongly encouraged to begin reviewing the provisions of the Marjory Stoneman Douglas High School Public Safety Act ("Act"). The Act was signed into law this month and contains numerous provisions directly related to addressing gun violence on school campuses. Among many provisions, the Act provides the following:

- Creates The Office of Safe Schools within the Florida Department of Education which is required to, among other things, establish and update a school security risk assessment tool for use by school districts and charter schools;
- Establishes the non-mandatory Coach Aaron Feis Guardian Program, which includes provisions for the appointment of "school guardians;"
- Limitations on firearm possession and ownership for certain individuals with mental health issues;
- Increasing the minimum age to purchase a firearm from 18 to 21;
- Prohibitions on bump-fire stocks;
- Provisions for risk protection orders that may be filed by a law enforcement officer or law enforcement agency;
- Creation of the School Safety Awareness Program, which includes the creation of a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to public safety agencies and school officials;
- Creation of the Marjory Stoneman Douglas High School Public Safety Commission;
- Provisions requiring school districts to refer certain students for mental health services;
- Revisions to emergency drills and procedures requirements, including active shooter and hostage situations;
- Requirements that school districts establish policies and procedures for the prevention of violence on school grounds;
- Requirements that school districts adopt policies for the establishment of threat assessment teams at each school;
- Provisions requiring school districts to allow law enforcement agencies and agencies designated as first responders the opportunity to tour schools once every three years;
- Provisions requiring school districts to partner with law enforcement agencies to establish or assign one or more safe-school officers at each school facility; and
- Creation of the Florida School Schools Assessment Tool (to be developed by the Office of Safe Schools).

Read more here.

New Law Creates Certain Public Records Act Exemptions Related to School Safety

In light of the recent tragedy at Marjory Stoneman Douglas High School, Governor Rick Scott signed Senate Bill 1940 into law. The new law exempts from Florida's Public Records Act the identity of any individual who reports suspicious activity through a new mobile suspicious activity reporting tool created through the "School Safety Awareness Program" and held by the Florida Department of Education, law enforcement agencies, or school officials. The law also exempts from Florida's Public Records Act the identity of any safe-school officials.

Read more here.

Secretary Betsy Devos Reaffirms DOE's Position on Transgender Student Complaints

Last month, we reported that the Department of Education will not take action on civil rights complaints filed by transgender students prohibited from using the bathroom matching their gender identity. On March 20, 2018, during a hearing before a congressional committee, Secretary Devos was asked why the Department of Education would not follow decisions in the Sixth and Seventh Circuits regarding transgender students (these circuits have found that transgender students should be permitted to use the bathroom matching their gender identity). Devos responded that the Department will continue with its current position until Congress clarifies the law or the Supreme Court intervenes. She also stated that the Department of Education is not going to make new law. Based on Devos' comments, it appears these issues will continue to be litigated in the Courts until Congress or the Supreme Court clarifies the issue.

The video from the congressional committee hearing is available here.

DOE Issues Q&A on Endrew F.

In March of 2017, the U.S. Supreme Court issued an important opinion in Endrew F. v. Douglas County School District (Case No. 15-827) addressing the appropriate standard for determining whether a free appropriate public education ("FAPE") has been offered/provided under the Individuals with Disabilities Education Act ("IDEA"). Ultimately, the U.S. Supreme Court held, "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." In the decision, the U.S. Supreme Court explained, in pertinent part, as follows:

> …A child's IEP need not aim for grade-level advancement if that is not a reasonable prospect. But that child's educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.
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> This standard is more demanding than the "merely more than *de minimis*" test applied by the Tenth Circuit. It cannot be right that the IDEA generally contemplates grade-level advancement for children with disabilities who are fully

> integrated in the regular class-room, but is satisfied with barely more than *de minimis* progress for children who are not.

On December 7, 2017, DOE issued a new Q&A addressing FAPE in light of the decision in Endrew F. The Q&A further explains how FAPE is defined and clarifies the standard for determining FAPE. Of note, the Q&A provides the following explanation as to what "reasonably calculated" means in Endrew F.:

> The "reasonably calculated" standard recognizes that developing an appropriate IEP requires a prospective judgment by the IEP Team. Generally, this means that school personnel will make decisions that are informed by their own expertise, the progress of the child, the child's potential for growth, and the views of the child's parents. IEP Team members should consider *how* special education and related services, if any, have been provided to the child in the past, including the effectiveness of specific instructional strategies and supports and services with the student. In determining whether an IEP is reasonably calculated to enable a child to make progress, the IEP Team should consider the child's previous rate of academic growth, whether the child is on track to achieve or exceed grade-level proficiency, any behaviors interfering with the child's progress, and additional information and input provided by the child's parents. As stated by the Court, "any review of an IEP must consider whether the IEP is reasonably calculated to ensure such progress, not whether it would be considered ideal.

DOE's Q&A is available at the following link: Q&A.

A copy of the Supreme Court's opinion is available at the following link: Endrew F.

Public Colleges and University Have "Special Relationship" With Students and a Duty to Protect Students from Potential Violence in School-sponsored Activities: California Supreme Court

The California Supreme Court overturned a lower court decision and allowed UCLA student Katherine Rosen to proceed in lawsuit against UCLA. In 2009, Rosen was stabbed with a knife by another student when both were in a chemistry class. Rosen filed suit against UCLA, claiming the university had knowledge of the attacker's aggressive tendencies and failed to warn and protect Rosen.

Whether a "special relationship" exists is a question of law, and if found, creates duty to warn and protect from foreseeable harm. Classic examples of this "special relationship" are between an inn-keeper and its guests and between a common carrier and its passengers. The California Supreme Court determined that the relationship between a university and its students fits under "the paradigm of a special relationship." The Court, however, noted that this relationship is not boundless, applying only during the duration of the student's enrollment at the university.

Read more here.

Firm News

We are pleased to announce that **Mitchell J. Herring** has joined the Firm as an associate attorney. Prior to joining the Firm, Mitchell Was a Senior Attorney in the Florida Department of Management Services. Mitchell earned his B.S. in Chemistry from Florida State University and his Juris Doctor from the University of Florida Levin College of Law. He serves on the Board for the Asian Coalition of Tallahassee and is an Eagle Scout. Mitchell will represent employers in state and federal court as well as administrative forums in all manner of labor and employment issues.

Terry J. Harmon presented *Social Media Policies; Key Elements and Enforcement* in Gainesville, Florida, on March 2, 2018. The day-long conference was organized by Neola, Inc. and the Florida School Boards Association and included multiple speakers on social media issues in public school districts. Attendees included personnel from multiple school districts in Florida.

Robert J. Sniffen has been appointed to the Flagler College-Tallahassee Community Advisory Council.

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.