

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT September 2019

Immediate Termination of Florida Charter School Upheld by DOAH

Last week, the Florida Division of Administrative Hearings issued a Final Hearing upholding the School Board of Manatee County, Florida's immediate termination of Lincoln Memorial Academy, a conversion charter school. The lengthy Final Order was issued following a 4-day administrative hearing and outlines the numerous reasons why the School Board was legally justified in proceeding with immediate termination. [Terry J. Harmon](#) served as co-counsel for the School Board along with Erin Jackson and Ashley A. Tinsley.

A copy of the Final Order is available at the following link: [ABC7 \(WWSB\)](#).

Deadline to Submit Active Assailant Response Plan is October 1, 2019

On September 27, 2019, the Florida Department of Education issued a Memorandum to all School District Superintendents and Charter School Principals reminding them that the deadline to certify that all school personnel have received annual training on their active assailant response plan is October 1, 2019. The certification is now a legal requirement as a result of Senate Bill 7030 (2019). FL DOE's Memorandum is available at the following link: [Memorandum](#).

US DOE Requires Significant Corrective Action from School District to Address Sexual Violence

On September 12, 2019, the U.S. Department of Education ("US DOE") announced that it reached a resolution agreement with Chicago Public Schools after OCR determined the school district mishandled student-on-student and adult-on-student sexual harassment over a period of years. The Resolution Agreements requires the District to (directly quoted from press release):

- Provide complainants who believe the District mishandled their complaints of sexual misconduct with the opportunity to receive a second, independent review of those complaints
- Review the actions of current and former District employees who failed to take appropriate responsive action to reports of sexual misconduct, and as appropriate, take responsive action concerning those employees
- Revise its Title IX structure to ensure that the Title IX Coordinator has full authority to effectively coordinate the District's efforts to comply with Title IX
- Develop a comprehensive process for responding to all complaints of sex discrimination and fully document responsive actions taken; and

- Change the District's Title IX procedures to ensure impartial investigation of sexual misconduct complaints, including a requirement that attorneys involved in a Title IX investigation recuse themselves from handling the same case against the District.

A copy of US DOE's press release is available at the following link: [Press Release](#).

Federal Government Releases School Safety District Guide

On September 25, 2019, the federal government released a guide designed to “help districts support schools developing and maintaining customized emergency operations plans (EOPs). The guide (*“The Role of Districts in Developing High-Quality School Emergency Operations Plans”*) was prepared jointly by several federal agencies, including US DOE and the U.S. Departments of Justice, Homeland Security, and Health and Human Services.

A copy of the guide is available at the following link: [Press Release](#).

Florida “Hands-Free” Law for Wireless Communication Devices in School and Construction Zones Begins October 1, 2019

On October 1, 2019, Section 316.06, [Florida Statutes](#), will go into effect. Subject to certain exceptions, drivers are prohibited from operating a motor vehicle while using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined under Section 316.003 (104), [Florida Statutes](#). From October 1, 2019, through December 31, 2019, law enforcement officers may stop motor vehicles to issue verbal or written warnings to persons who are in violation of the law. Beginning January 1, 2020, law enforcement officers may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a handheld manner who are in violation of the law.

More information is available at the following link: [ClickOrlando.com](#).

Parent’s Attendance at Child’s CSE/IEP Meeting Can be a Qualifying Event for Taking Intermittent FMLA Leave

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Leave is only for specified reasons, and the types of events that trigger FMLA protections typically include the arrival of a new child in the family, the care of a family member with a serious health condition, and the employee’s own serious health condition that prevents the employee from performing their essential job duties. The DOL recently issued an opinion letter clarifying that a parent’s attendance at a CSE/IEP to address their child’s educational and special medical needs could be a qualifying event for taking intermittent FMLA leave. While not every CSE/IEP meeting may rise to the level of a qualifying event, employers should be aware that these meetings can qualify as care for a family member under the FMLA. The child’s doctor does not need to be present at the CSE/IEP meeting in order for the leave to qualify for intermittent FMLA leave.

A copy of the DOL's opinion letter is available at the following link: [DOL Opinion Letter](#).

From the Lighter Side: Married Man's Death During Sex on a Business Trip Ruled a Workplace Accident

A married Frenchman died while having sex on a business trip with someone other than his wife was still found by a French appellate court to have suffered a workplace accident and his estate was therefore eligible to receive "victim's family benefits" from both his employer and the state. The late employee was found dead in his hotel room shortly after having sex with a local woman he had just met.

The French appellate court upheld a lower court ruling which opined that "a sexual encounter is an act of normal life like taking a shower or eating a meal". The appellate court went on to note that an employee is entitled to his employer's protection for an "*accident du travail*" whether or not the accident took place as part of a professional activity or as an act of normal life.

Lawyers for the employer argued that his death was the result of his adulterous sex act which was outside the scope of his employment. The benefits at issue were significant; the ruling entitled any partners and children of the late traveler to a monthly benefit of up to 80 % of his salary until retirement and then a share of his pension.

There was no mention in the article as to how or if the employer established that the employee's death was directly attributable to his "*rendezvous*" with the local lady.

Read more [here](#).

Firm News

[Robert J. Sniffen](#) presented "HR Issues During the Period of Employment" at the Big Bend Society for Human Resources Management Employment Law Workshop in Tallahassee.

Past Issues of the Education Law Alert Available on Website

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