Education Law Alert - February 2021

SNIFFEN & SPELLMAN, P.A.

**EDUCATION LAW ALERT**
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## Transgender Student Bathroom Case May Head Back to U.S. Supreme Court

On September 22, 2020, in Grimm v. Gloucester County School Board, the Fourth Circuit Court of Appeals denied the school board's request for an *en banc* review of its earlier decision in favor of Grimm. The case involves the issue of whether the school board's policy separating bathrooms on the basis of biological sex violates Title IX and the Equal Protection Clause in the U.S. Constitution. After denying the school board's request, the Fourth Circuit issued a Mandate on September 30, 2020.

On February 19, 2021, the school board filed a Petition for a Writ of Certiorari with the Supreme Court of the United States (Case No. 20-1163). Respondent has until March 26, 2021, to file a response.

A copy of the Petition for a Writ of Certiorari is available at the following link: Petition.

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## Parkland Shooting Victims Argue School Board Had Duty to Warn about Shooter; Court Disagrees

The School Board of Broward County, Florida, had no duty to warn students at Marjory Stoneman Douglas High School about the future harm by the shooter. This was the opinion issued on February 8, 2021, by a circuit court judge presiding over the civil lawsuit filed by Parkland shooting victims (plaintiffs). In her written opinion, the judge focused, in part, on the issue of foreseeability. She noted the School Board had no control over the shooter. At the time of the shooting three years ago, the shooter had not been a student in the school system for over year. The judge also determined the School Board did not have any knowledge of a definitive threat by the shooter concerning any identifiable person(s) or place. The judge stated in her opinion, "requiring the [School Board] to have a duty to warn unspecified others about potential dangers from a particular individual they do not control (and who no longer is under the School Board's jurisdiction) without knowledge of a clear and specific threat . . . would be improper."

The opinion only disposed of the issue of whether the School Board had a duty to warn. The lawsuit will still proceed on other issues such as whether the School Board breached its duty to provide adequate security and reasonable protection.

The Order is available at the following link: Order.

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## Mask Lawsuit against Sarasota County School Board Dropped

The parents opposed to the Sarasota County School Board's COVID-19 mask policy have voluntarily dropped a lawsuit that they filed last fall. Patrick Leduc, an attorney in Tampa, filed the lawsuit in October on behalf of Sarasota parents Amy Cook, Gustavo Collazo, Nicholas Eastman and Catherine Gonzales. Leduc argued against the mask policy on behalf of the parents, saying it should be up to the parents, not the schools, to decide what is best for their children. Leduc said it became evident that judges were rejecting claims that mask mandates violated students' rights to an education. Leduc had lost three similar cases in Brevard, Indian River and Hillsborough counties, so he voluntarily dismissed the lawsuit in Sarasota without prejudice. In the Indian River case, Circuit Judge Janet Croom ruled that "free public education is not a fundamental right under the Florida Constitution." In the Hillsborough case, Hillsborough County Judge Martha Cook found that "requiring individuals to wear face coverings in a public location is not a constitutional violation."

To read more, click here: SNNTV.com.

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## U.S. Department of Education Issues Guidance on Assessing Students Learning During Pandemic

On February 22, 2021, the U.S. Department of Education ("US DOE") provided guidance to states emphasizing the important of flexibility in administering assessments this year as a result of the COVID pandemic and supporting the use of assessment data as a source of information for parents and educators to target resources and support, rather than for accountability purposes. The US DOE recognizes that some schools and Districts may not be able to safely administer statewide summative assessments this spring using their standard practices, while others may wish to prioritize learning time during the scant in-person schooling time this year in many communities. Ian Rosenblum, acting assistant secretary for elementary and secondary education, said that the US DOE "recognize[s] that at a time when everything in our education system is different, there need to be different ways that states can administer state tests like moving them to the fall so that precious in-person learning time this year can be spent on instruction. Balancing these priorities is the best approach." The USDOE's guidance makes clear that states should consider the ways they can do things differently this year. Flexibility available to states includes:

- Extending the testing window and moving assessments to the summer or fall;
- Giving the assessment remotely, where feasible; and,
- Shortening the state assessment, to make testing more feasible to implement and prioritize in-person learning time.

The Department's letter to Chief State School Officers outlining its plans for the 2020-2021 school year can be found here.

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## Justice Department No Longer Supports Transgender Athlete Ban in Girls' Sports

The Biden Administration withdrew its support for a federal lawsuit in Connecticut that seeks to ban transgender athletes from participating in girls' high school sports. Currently, Connecticut allows athletes to compete in sports according to their gender identity. Last March, then Attorney General William Barr, signed a letter of interest in the case, arguing that Connecticut's state law runs afoul of Title IX.

The Biden Administration's withdrawal of support is consistent with the President's recent executive order that prohibits discrimination based on gender identity in school sports and elsewhere. This constitutes a reversal from the Trump-era policies. Connecticut's Attorney General has expressed pleasure in the Biden Administration's policy shift, issuing a statement saying "transgender girls are girls and every woman and girl deserves protection against discrimination."

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## Claim Against School District for Failure to Provide Autism Therapy Subject to Requirement Under the IDEA to Exhaust Administrative Remedies

On February 5, 2021, the United States District Court for the District of South Carolina dismissed a lawsuit against the Horry County School District for failing to provide Applied Behavior Analysis (ABA), which is a specific form of autism therapy. In Z.W. v et al v. Horry County School District (Case No. 4:20-cv-00931-JD), the parent of a student diagnosed with Autism Spectrum Disorder requested the school district provide ABA therapy for his child, but the School Board allegedly denied this request. The parent filed a lawsuit claiming the School District violated the Americans with Disabilities Act (ADA) by denying his request.

The district court held the denial of ABA therapy for autism amounts to a denial of "free appropriate public education" (FAPE), which is a right conferred by the Individuals with Disabilities Education Act (IDEA). Accordingly, since the IDEA provides for administrative remedies for resolving disputes between parents and schools concerning the provision of a FAPE, the court held the parent must first exhaust the administrative remedies under IDEA.

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## CDC Updates Guidelines for Schools and Child Care Programs

On February 11, 2021, the Centers for Disease Control and Prevention updated its guidelines for Schools and Child Care Programs. The guidelines continue to include operational strategies for reopening schools, returning to in-person learning, and managing daily operations. Importantly, the guidelines continue to maintain that students, teachers and staff who have been close contacts (within 6 feet for more than 15 cumulative minutes over a 24-hour period) must quarantine.

Source: CDC Summary of Recent Changes.

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## From the lighter side: Florida's Fourth DCA Upholds *The People's Court* Decision

Queue the intro music, Florida's Fourth District Court of Appeal has upheld a decision issued by the television show *The People's Court,* a long running staple of daytime television which has been on air since 1981. The current host or "judge" of the show, Marilyn Milian, has been issuing verdicts on the television series since 2001 after leaving her position as a Judge of the Miami Circuit Court.

In a suit arising out of the purchase of an automobile originally filed in Indian River County, Plaintiff Larkin and Defendant Grutman agreed to settle their dispute through appearing on the show in August 2020. Milian acted as the arbitrator in the case. Apparently dissatisfied with the handling of the case, Larkin moved to have the settlement agreement dissolved after appearing on the show and was promptly denied by the Indian River County Court.

On appeal, the Court found that the County Court did not abuse its discretion in denying Larkin's motion and functionally upheld the ruling of *The People's Court*. To read more, please refer here.

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