SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT
March 2021

CDC Issues Updated Operational Strategy for K-12 Schools

On March 19, 2021, the Centers for Disease Control and Prevention ("CDC") issued an updated operational strategy for K-12 schools. The following is a summary of the changes (quoted from website linked below):

- Revised physical distancing recommendations to reflect at least 3 feet between students in classrooms and provide clearer guidance when a greater distance (such as 6 feet) is recommended.
- Clarified that ventilation is a component of strategies to clean and maintain healthy facilities.
- Removed recommendation for physical barriers.
- Clarified the role of community transmission levels in decision-making.
- Added guidance on interventions when clusters occur.

The updated operational strategy is available at the following link: CDC.

Appeals Court Rules in Favor of School District After It Suspended High School Football Coach for Praying on the Field

In *Kennedy v. Bremerton Sch. Dist.*, --- F.3d ---- (9th Cir. Mar. 18, 2021), the Bremerton School District in the State of Washington placed a high school football coach on administrative leave after the coach refused a directive to stop praying on the 50-yard line after games. The coach filed suit and claimed the school district discriminated against him because of his religion and violated his rights to freedom of speech and religion under the First Amendment. The trial court ruled in favor of the school district, a decision which was subsequently upheld by the appellate court.

The evidence showed the coach had insisted players stand next to him in prayer at midfield and the crowd watch him from the stands. The appellate court concluded, "Kennedy's attempts to draw nationwide attention to his challenge to [the school district] compels the conclusion that he was not engaging in private prayer, but was instead engaging in public speech of an overtly religious nature while performing his job duties." Based on the manner in which the coach conducted his on-filed prayer, the appellate court stated, "there is no doubt that an objective observer, familiar with the history of Kennedy's practice, would view his demonstrations as [the school district's] endorsement of a particular faith." Therefore, the school district had a legitimate interest in restricting the coach's on-field prayer in order to avoid violating the Establishment Clause under the First Amendment. Under the Establishment Clause, public schools are proscribed from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.

Read the opinion here.

Proposed Legislation in Florida Impacts IEP Requirements

House Bill 173 continues to work its way through the Florida Legislature and, if approved, will impact certain requirements related to individual education plans ("IEPs") for students with disabilities. Specifically, the proposed legislation requires IEP teams to address a student's transition to postsecondary and career opportunities during the student's seventh grade year or when the students reaches the age of 12 – whichever occurs first. The transition plan must be operational and in place to begin implementation on the first day of the student's first year of high school. The bill also requires the process to including, among other things, as follows:

Provision of the information to the student and his or her parent of the school district's high school-level transition services, career and technical education, and collegiate programs available to students with disabilities and how to access such programs. Information shall also be provided on school-based transition programs and programs and services available through Florida's Center for Students with Unique Abilities, the Florida Centers for Independent Living, the Division of Vocational Rehabilitation, the Agency for Persons with Disabilities, and the Division of Blind Services. Referral forms, links, and technical support contacts for these services must be provided to students and parents at IEP meetings.

More information is available at the following link: HB 173.

Restraint, Seclusion and Video Cameras in Self-Contained Classrooms Addressed in Proposed Legislation in Florida

House Bill 149 (Students with Disabilities in Public Schools) proposes significant changes to how schools must respond to issues related to students with disabilities, including a ban on seclusion, revisions to laws related to restraint, requirements that school districts adopt positive interventions and supports and identify all school personnel authorized to use the interventions and supports, and enhanced training requirements for all school personnel authorized to use positive behavior interventions and supports.

The proposed legislation also creates a Video Cameras in Public School Classrooms Pilot Program beginning with the 2021-2022 school year that ending after three school years. The Pilot Program requires schools to provide a video camera in any self-contained classroom upon the written request of a parent of a student in the classroom.

More information is available at the following link: HB 149.

Court Addresses § 1983 and Fourth Amendment Claims Involving Questioning of Student by a School Resource Officer

In *L.G. v. Columbia Pub. Sch.*, No. 20-2161 (8th Cir. Mar. 18, 2021), a 16-year-old high school student, L.G., was called to the school's office and informed by the school resource officer that law enforcement was there to question her. L.G. was taken to a room with two officers, and the door was shut behind her. While in the room, L.G. claims she was interrogated by the officers about a sexual assault that occurred at the house of a student with the same first name as L.G. L.G. described being distraught during the interrogation, including physically shaking based on her feelings of worry. She also claims her mental health deteriorated after the interrogation due to extreme anxiety. L.G. sued the school resource officer, among others, and the school resource officer claimed qualified immunity. When that motion was denied, the school resource officer filed an interlocutory appeal.

In the decision, the Court first qualified the school resource officer's involvement in L.G.'s interrogation to be fairly minimal and stated her actions did not rise to the level of an unconstitutional seizure. Further, given that students are not afforded Fourth Amendment protections to the same extent they would be outside of school, an officer in the school resource officer's position would not necessarily have known whether escorting L.G. to a room with other officers and closing the door behind her would constitute a seizure in violation of L.G.'s constitutional rights. The Court further reasoned that the minimal persuasive authority that has been established is not enough to have put the school resource officer on fair notice that

she was violating the rights of L.G. Moreover, the facts of the case were not so rare as to apply the rule of obvious clarity. Essentially, the school resource officer escorting L.G. to an interrogation room and closing the door was not a bright line transgression of liability. Thus, the school resource officer's actions were not unreasonable given the circumstances.

Ultimately, the Court reversed the district court's order and remanded the case, instructing the district court to dismiss L.G.'s § 1983 claim against the school resource officer.

A copy of the opinion is available at the following link: L.G.

NLRB Withdraws Proposed Rule Intended to Block Student Union Organizing

The NLRB has dropped its bid to reverse a 2016 ruling which allows college and university student employees the right to unionize under the laws, rules, regulations, and protections of the National Labor Relations Act (NLRA). The right of student workers to unionize has changed frequently since its original granting in 2000. The NLRB reversed course and rescinded those rights in 2004, but reinstated them in 2016. The possibility of rescission was once again raised in 2019, but was never adopted.

More information is available at the following link: NLRB.

Proposed Legislation Requires Free Feminine Hygiene Products to be Available in Florida Schools

House Bill 75 (Feminine Hygiene Products Required in Florida Schools) proposes a new requirement that feminine hygiene products be made available in female restroom facilities at no cost. Specifically, tampons and sanitary napkins are to be provided in connection with the menstrual cycle. This provision would apply to Florida public schools as well as Florida charter schools serving students in grades K-12.

The text of the proposed legislation states that feminine hygiene products are not optional for a lot of students, and they are an on-going need and cannot be easily substituted if they are not readily accessible. The text of the legislation also notes that the goal is to prevent burdensome interruption of these students' daily lives while their menstrual cycles are taking place, as well as encourage attendance that is consistent throughout the entirety of the month.

More information is available at the following link: HB 75.

From the Lighter Side: Suit claims Speed Limit in School Zone Dangerously Slow

Attorney Kevin Stocker filed a petition in New York state court on behalf of himself and 53 others, seeking the revocation of the new mandated school zone speed limit. A new Buffalo program referred to as "the School Zone Safety Program" sets a 15 mph speed limit around 20 private and charter schools. Drivers captured on camera traveling at least 26 mph will receive a $50 citation.

The lawsuit alleges that the sudden drop in speed limits will create dangerous conditions around the school zones as well as potential civil liberties and privacy issues for students. City officials have previously stated that they have seen a drop in speeding near schools with cameras. The lawsuit seeks an injunction against the city's speed camera program, the dismissal of all current outstanding tickets issued as part of the program, and refunds for those tickets that have already been paid.

Source: BuffaloNews.com.

Firm News

Dawn Whitehurst, **Michael Spellman**, and **Hannah McKinney** received a defense verdict following a 5-day jury trial in the Middle District of Florida. The team defended two individual defendants alleged under Section 1983 to have violated the constitutional rights of a former pretrial detainee who died shortly after her incarceration in 2015. Originally, this case had seven defendants and eight claims. The trial was the final chapter in a grueling case in which no defendant paid out any damages.

Rob Sniffen has been appointed to the Board of Directors of the Community Foundation of North Florida ("CFNF"), a non-profit organization whose mission is to enhance the quality of life in North Florida through the promotion and support of charitable giving. The CFNF serves an eleven-county area, including Calhoun, Franklin, Gadsden, Gulf, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla Counties.

In March, **Michael Spellman** and **Elmer C. Ignacio** presented a webinar entitled, "*Return to Work in the Time of COVID*," as a part of the Employment Law Advisor Webinar series.

On March 29, 2021, **Elmer C. Ignacio** served as a guest lecturer at Florida A & M University and presented "*Labor and Employment Law: Topics and Special Issues*."

Elmer C. Ignacio authored "*To Meet or Not to Meet – That is the Question; Minimizing Legal Risk for In-Person Events*," a feature article in the March/April 2021 issue of Source, which is published by the Florida Society of Association Executives (FSAE).

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.

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