

SNIFFEN & SPELLMAN, P.A.

SCHOOL LAW ALERT *November 2011*

Florida First District Court of Appeal Certifies Question of Great Public Importance to the Florida Supreme Court which Greatly Impacts Florida Schools

On November 23, 2011, the First District Court of Appeal issued an important order in Haridopolos v. Citizens for Strong Schools, Inc. (Case No. 10-6285). The order denied Petitioners' (Florida lawmakers) Petition for Writ of Prohibition but certified a question of great public importance to the Florida Supreme Court. In the order, the Court stated, "the present case lies at the intersection of well established rules governing writs of prohibition and significant, but unsettled, questions about Florida's 'paramount duty' to provide 'for the education of all children residing within its borders,' Art. IX, § 1(a), Fla. Const..." The question certified to the Florida Supreme Court is as follows:

DOES ARTICLE IX, SECTION 1(A), FLORIDA CONSTITUTION, SET FORTH JUDICIALLY ASCERTAINABLE STANDARDS THAT CAN BE USED TO DETERMINE THE ADEQUACY, EFFICIENCY, SAFETY, SECURITY, AND HIGH QUALITY OF PUBLIC EDUCATION ON A STATEWIDE BASIS, SO AS TO PERMIT A COURT TO DECIDE CLAIMS FOR DECLARATORY JUDGMENT (AND SUPPLEMENTAL RELIEF) ALLEGING NONCOMPLIANCE WITH ARTICLE IX, SECTION 1(A) OF THE FLORIDA CONSTITUTION?

Fairly summarized, Petitioners filed the action in the First District Court of Appeal after Leon County Circuit Court denied their attempt to dismiss an amended complaint filed by Respondents. The Respondents are two not-for-profit corporations, two public school students, and four parents or guardians of public school students. According to the Court, the amended complaint alleged, "Florida's public schools are not safe and secure, that graduation rates are too low, that student promotion and retention policies are ineffective, that results of achievement tests reveal various inadequacies, and much more."

A copy of the Order is available at the following link: [Haridopolos v. Citizens for Strong Schools, Inc.](#)

Additional Resources: [Tampabay.com](#); [Tallahassee.com](#); [Jacksonville.com](#)

Summary of Selected Florida Legislation Filed in November

During the month of November, several bills were filed impacting education in Florida. Specifically, the Florida House of Representatives filed three noteworthy bills relating to (1) Parental Involvement and Accountability in the Public Schools (HB 543), (2) Disability

Awareness (HB 589), and (3) Bullying in the Public School System (HB 627). The quoted summaries of the bills provided by the Florida House of Representatives are as follows:

- **Parental Involvement and Accountability in the Public Schools (HB 543)** - Specifies purpose to provide information & tools to parents of preK-5 students & to set minimum standards for parental involvement; specifies causes for student underachievement; requires prek-5 teachers to evaluate parental involvement & send evaluation to parents under certain circumstances; requires dispute process; requires certain reporting.
- **Disability Awareness (HB 589)** - Requires district school board to provide disability history & awareness instruction in all K-12 public schools; requires DOE to assist in creating curriculum & to establish disability history & awareness advisory council; provides responsibilities of council.
- **Bullying in the Public School System (HB 627)** - Revises provisions relating to prohibited bullying or harassment with respect to computer-related incidents; provides that bullying includes cyberbullying; revises list of behaviors that indicate possible bullying; revises components of school district policy on bullying & harassment; requires investigation of complaint of computer-related incident.

More information related to the bills is available at the following links: [HB 543](#); [HB 589](#); and [HB 627](#).

United States Department of Education Investigating Penn State University's Handling of Sexual Misconduct Issues Involving Jerry Sandusky

The sexual misconduct scandal at Penn State University ("PSU") has expanded to the United States Department of Education ("DOE"). On November 9, 2011, DOE announced it will conduct its own investigation of the allegations to determine whether PSU complied with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act"). The Clery Act mandates that colleges and universities "disclose the number of criminal offenses on campus that are reported each year" and "issue a timely warning if a reported crime represents a threat to the campus community."

A press release from DOE is available at the following link: [Press Release](#).

Third Circuit Court of Appeals Denies School District's Request for Reimbursement for Tuition and Transportation Paid During IDEA Stay-Put Period

On November 21, 2011, the Third Circuit Court of Appeals issued an order in J.E. ex rel. J.E. v. Boyertown Area Sch. Dist. (Case No. 11-1632), denying the Boyertown Area School District's ("School District") request for reimbursement for tuition and transportation paid to a private school during stay-put. The appeal was filed by J.E.'s parents after the School District prevailed at a due process hearing and in a subsequent appeal to the District Court. The parents argued on appeal that the IEP proposed by the School District was inappropriate. On cross appeal, the School District argued for the first time that J.E.'s parents should be required to reimburse it for costs paid to J.E.'s private school for tuition and transportation during stay-put.

Ultimately, the Court held that the IEP provided by the School District was appropriate. However, it refused to order that J.E.'s parents reimburse the School District for costs paid by the School District during stay-put, because the School District failed to raise its demand for reimbursement during the District Court case. Thus, the Court held, "[w]e need not consider the merits of this argument because the School District did not request reimbursement in the District Court, and it points to no statute or rule authorizing us to consider this question for the first time on appeal. We express no opinion as to whether such relief would have been available if requested in the District Court in this case or whether the School District may pursue such relief in a subsequent case."

A copy of the opinion is available at the following link: [J.E. ex rel. J.E. v. Boyertown Area Sch. Dist.](#)

Seventh Circuit to Readdress First Amendment Case Involving High School Graduation Ceremony at Wisconsin Church

The *Courthouse News Service* recently published an article stating that the Seventh Circuit Court of Appeals will "rehear arguments on whether a Wisconsin high school violated the First Amendment by holding graduation ceremonies in a church." *Doe v. Elmbrook School District* (Case No. 10-2922). Prior to deciding to rehear the case, the Seventh Circuit Court of Appeals entered an order siding with the School District. In the order issued on September 9, 2011, the Court stated, "[w]e hold that, on the record before us, the [School] District's use of the rented church space was neither impermissibly coercive nor an endorsement of religion on the part of the [School] District. Because there was no violation of the Establishment Clause, we affirm the judgment of the district court." The September 9, 2011, order has been vacated.

The September 9, 2011, opinion (vacated) is available at the following link: [Doe v. Elmbrook School District](#).

Source: [Courthouse News Service](#).

Florida Bill Allowing Prayer in Schools Continues Through Senate

As we reported in the September edition of the *School Law Alert*, Florida Senator Gary Siplin filed Senate Bill 98 (SB 98) which authorizes School Boards to adopt resolutions that allow prayers of invocation or benediction at secondary school commencement exercises or any other noncompulsory student assembly. On November 2, 2011, the Committee on Education Pre-K - 12 approved SB 98 with a minor amendment.

More information related to SB 98 is available at the following link: [SB 98](#).

Florida Department of Education Rules Under Review

The Florida Department of Education ("FLDOE") is constantly drafting new and revised rules applicable to public schools across the State of Florida. In an effort to keep public schools and the public apprised of its efforts, FLDOE publishes a website listing rules under review. The

website is available at the following link: [State Board Rules Under Review](#).

Happy Holidays

The attorneys and staff of Sniffen & Spellman, P.A. wish you and yours a happy holiday.

Past Issues of the School Law Alert Posted on Website

Past issues of the School Law Alert are available on the Firm's website: www.sniffenlaw.com.

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