

SNIFFEN & SPELLMAN, P.A.

SCHOOL LAW ALERT *October 2011*

Eleventh Circuit Court of Appeals Issues Injunction Pending Appeal in Lawsuit Regarding Immigration Checks of Public School Students in Alabama

In a case that is drawing nationwide attention, the Eleventh Circuit Court of Appeals recently issued an injunction pending appeal holding that schools in Alabama are not permitted to check students' immigration status. The United States Department of Justice ("DOJ") filed the appeal with the Eleventh Circuit Court of Appeals after a lower federal court upheld an Alabama law allowing schools to conduct immigration checks on students. DOJ contends that the Alabama law will lead to discrimination against legal and illegal residents and will cause Hispanic families to flee Alabama.

A copy of the injunction is available at the following link: [USA v. Alabama](#).

Sources: [Associated Press](#); [The New York Times](#); [USA Today](#).

Florida Department of Education Issues New Technical Assistance Paper Regarding Restraint and Seclusion of Students with Disabilities

The Florida Department of Education issued a new Technical Assistance Paper ("TAP") on October 14, 2011, providing guidance for the use, documentation, reporting, and monitoring of seclusion and restraint with students with disabilities. The newest TAP revises and replaces a previous TAP issued on September 8, 2010. The TAP addresses, among other things, the following: "(a) when restraint and seclusion may be used; (b) who should use restraint and seclusion; (c) training necessary for correct restraint; (d) considerations for appropriate programs of restraint; (e) proper documentation; (f) parent notification; and (g) monitoring."

A copy of the TAP is available at the following link: [DPS 2011-165](#).

Parents of Autistic Student State Valid Claim under § 1983 against Charter School

On September 20, 2011, the Middle District of Florida issued an order denying a Motion to Dismiss filed by the Princeton House Charter School, Inc. ("PHCS") against the parents of a six-year-old autistic student. *S.S. v. Princeton House Charter School, Inc.*, Case No. 6:11-cv-1145-Orl-31GJK, (M.D. Fla. 2011). In *S.S.*, Plaintiff brought § 1983 (corporal punishment) and negligent hiring claims against PHCS after he was allegedly abused in school which led to physical injuries and severe psychological trauma. The alleged abuse occurred when several students were required to crawl through a tunnel despite screaming and crying. Plaintiff was supposedly shoved into the tunnel trapping her inside. Plaintiff cried, screamed, and was subsequently dragged out by force. Another instance of abuse involved Plaintiff being dragged

across the classroom for no reason and restrained to her chair. While restrained to the chair, Plaintiff screamed until the chair tipped over and fell on her.

PHCS moved to dismiss the § 1983 claim arguing that the allegations did not “shock the conscience,” and PHCS was not acting under color of state law. The Court disagreed with PHCS and explained, “[t]he allegations of physical harm in this case include, grabbing of the arms, dragging across a room, and physical restraint resulting in bruising on the neck and body. This Court has found similar allegations sufficient to survive a motion to dismiss under § 1983...” Regarding PHCS’ argument that it was not acting under color of state law, the Court held, “there are sufficient allegations to suggest that the ‘nexus/joint action test’ can be met. The Complaint also includes allegations which support application of the ‘public function test.’ Therefore, the Complaint sufficiently states a claim for relief under § 1983.”

A copy of the opinion is available at the following link: [S.S. v. Princeton House Charter School, Inc.](#)

Settlement Reached in Religious Discrimination Lawsuit Related to Muslim Teacher’s Request for a Religious Pilgrimage

The Berkeley School District 87 (“District”) located in Chicago, Illinois, recently entered into a consent decree with the United States Department of Justice (“DOJ”) in order to settle a federal religious discrimination lawsuit filed by DOJ on behalf of a Muslim teacher. The case arose after the Muslim teacher was denied the right to take leave to attend a two-week religious pilgrimage. DOJ filed the lawsuit following the teacher’s submission of a charge of discrimination to the Equal Employment Opportunity Commission (“EEOC”). DOJ alleged in the complaint that the District denied the teacher “a reasonable accommodation of her religious practice, compelling [her] to choose between her job and her religious beliefs, thus forcing her discharge.” The District agreed to pay \$75,000.00 for back pay, compensatory damages, and attorney’s fees.

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

Source: [Chicago Sun-Times](#).

Florida Legislature Holds Power to Set College Tuition Rates

The First District Court of Appeal recently resolved a years-long dispute between the Florida Legislature and the Florida Board of Governors. The lawsuit involved a challenge to the Florida Legislature’s authority to set college tuition rates in Florida. Ultimately, the Court ruled in favor of the Florida Legislature and determined that a 2002 constitutional amendment did not give any authority to the Florida Board of Governors to set college tuition rates. The case is expected to go before the Florida Supreme Court on appeal. The lawsuit was originally filed by former Florida Governor Bob Graham.

A copy of the opinion is available at the following link: [Graham v. Haridopolos](#).

Source: [Orlando Sentinel](#).

Proposed Bill Allows In-state Tuition for Undocumented Students

The Florida House of Representatives and Florida Senate each introduced legislation that would allow undocumented students to pay in-state tuition. House Bill 81 (“HB 81”) and Senate Bill 106 (“SB 106”) are already drawing media coverage and are likely to be heavily criticized as they move through the legislative process. In order to qualify for in-state tuition, undocumented students must, among other things, attend a Florida high school for three years and ultimately graduate from a Florida high school.

More information related to the bills is available at the following links: [HB 81](#); [SB 106](#).

Source: [Orlando Sentinel](#).

Donation of Sick Leave for School District Employees

On October 6, 2011, Representative Harrell filed House Bill 285 (“HB 285”). HB 285 amends Section 1012.61, [Florida Statutes](#), by giving each district school system authority to create a policy permitting district employees to donate sick leave to other district employees. If passed, HB 285 becomes effective July 1, 2012.

More information pertaining to HB 285 (including the text of the bill) is available at the following link: [HB 285](#).

Florida Attorney General Pam Bondi Issues Opinion Regarding Chapter 119 and Assistant Superintendent Performance Evaluations

On September 21, 2011, Attorney General Bondi issued an opinion in response to an inquiry from the Lake County School Board (“Board”). Specifically, the Board asked whether it may “remove from a personnel file or destroy an assessment of professional performance standards for an assistant superintendent that was not filed by the school superintendent in accordance with the requirements of section 1012.34(3)(c), Florida Statutes.” After a lengthy analysis of the issues, Attorney General concluded that “an Assessment of Professional Performance Standards, District Administrative Appraisal I for an Assistant Superintendent that was not filed in accordance with the requirements of section 1012.34(3)(c), Florida Statutes, is a public record and part of the assistant superintendent's personnel file which may not be removed from public view or destroyed.”

Attorney General Bondi’s opinion is available at the following link: [AGO 2011-19](#).

United States Department of Education Settles Civil Rights Enforcement Action Against Los Angeles Unified School District

The United States Department of Education (“USDOE”) announced that it has settled “the first proactive civil rights enforcement action taken by the Department of Education under the Obama

Administration.” The enforcement action was taken against the Los Angeles Unified School District (“District”) following an investigation by the Office of Civil Rights (“OCR”) that targeted the educational opportunities of the District’s “English Learners and comparability of resources for African-American students.”

The District has agreed to revise its English Learner program and focus on closing the gap with respect to achievement and opportunity for African-American students. The District also agreed to “increase its focus on college- and career-ready curricula and programs, and ensure access to needed supports, including effective teachers, to accelerate student progress.” OCR has retained power to monitor the agreement.

More information regarding the settlement, including the list of actions which must be taken by the District, is available at the following link: [USDOE Press Release](#).

Study Finds Flaws in Virtual Education

While virtual schools are becoming more and more popular in Florida, a recent study found numerous flaws in virtual school education. The study was published on October 25, 2011, by professors at the National Education Policy Center at the University of Colorado. Issues raised in the study include the quality of virtual education and lack of supervision.

The study is available at the following link: [Online K-12 Schooling in the U.S.: Uncertain Private Ventures in Need of Public Regulation](#).

Source: [The Washington Post](#).

Firm News

October is National Breast Cancer Awareness Month, and **Sniffen & Spellman, P.A.** is proud to support the fight against breast cancer. **Teri S. Wolfe** participated in the **30-mile *It's the Journey – The Atlanta 2-Day Walk*** on September 24 and 25, 2011. The event is designed to benefit breast cancer organizations and programs in Georgia. Nearly 700 walkers completed the 9th annual event. Additionally, **Heather N. Tyndall-Best** helped raise funds as a part of the Tallahassee Women Lawyers group for the *Making Strides Against Breast Cancer* walk held on October 23, 2011, at the Southwood Town Center in Tallahassee, Florida.

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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