

SNIFFEN & SPELLMAN, P.A.

SCHOOL LAW ALERT *September 2011*

School District Prevails in First Amendment Case Brought by Teacher

On September 13, 2011, the Ninth Circuit Court of Appeals addressed the question of whether a public school district infringed upon the First Amendment liberties of one of its teachers when it ordered him not to use his public position as a pulpit from which to preach his own views on the role of God in our Nation's history to the captive students in his mathematics classroom. Johnson v. Poway United Sch. Dist. (Case No. 10-55445). Ultimately, the Court answered the question in favor of the School District. The Court explained that Plaintiff, a high school calculus teacher, "goes to work and performs the duties he is paid to perform, he speaks not as an individual, but as a public employee, and the school district is free to 'take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted...[j]ust as the Constitution would not protect [Plaintiff] were he to decide that he no longer wished to teach math at all, preferring to discuss Shakespeare rather than Newton, it does not permit him to speak as freely at work in his role as a teacher about his views on God, our Nation's history, or God's role in our Nation's history as he might on a sidewalk, in a park, at his dinner table, or in countless other locations."

The opinion is available at the following link: [Johnson v. Poway United Sch. Dist.](#)

Florida School District Granted Summary Judgment in First Amendment Retaliation Case

On August 12, 2011, the United States District Court for the Northern District of Florida granted the School Board of Calhoun County's ("School Board") Motion for Summary Judgment with respect to an employee's First Amendment retaliation claim. Proper v. School Board of Calhoun County, Florida (Case No. 10-cv-287). In Proper, Plaintiff alleged that when she worked as a paraprofessional during the 2006 school year, she witnessed an incident of child abuse during which a general education teacher placed a disabled student's desk in the doorway of a closet. Plaintiff did not report the abuse. In July of 2006, Plaintiff was hired as a full-time teacher.

In 2008, Plaintiff was subpoenaed to give deposition testimony related to the abuse incident. Plaintiff's testimony was unfavorable for the School District. In 2009, Plaintiff was hired as a Principal and co-taught in a special education classroom. Throughout the year, classroom paraprofessionals complained about the negative atmosphere and lack of instruction, guidance, and consistency in Plaintiff's classroom. At the end of the 2009-2010 school year, it was recommended that Plaintiff's contract not be renewed. No reason was given for the decision except that it was not in the best interest of the school to renew her contract. Plaintiff felt that the decision was in retaliation for her giving unfavorable deposition testimony.

The Court ultimately held that Plaintiff's deposition testimony was not constitutionally protected speech and explained that since Plaintiff was under a duty to report the child abuse (i.e.

unprotected speech), the fact that she failed to do so does not entitle her to First Amendment protection. The Court also rejected Plaintiff's argument that her compliance with a subpoena for deposition was not pursuant to an official duty. Finally, the Court explained that Plaintiff failed to show a causal relationship between the adverse employment action she suffered and her alleged protected speech.

If you would like a copy of the opinion, please call our office.

Update: Missouri Legislature Strikes Law Restricting Teachers from Communicating with Students on Social Networking Sites

As we reported in last month's School Law Alert, a Missouri court granted the Missouri State Teachers Association's request for a preliminary injunction with respect to a new Missouri law (SB54, §162.069.4) banning teachers from communicating with students on social networking sites. Missouri State Teachers Association v. State of Missouri (Case No. 11AC-CC00553). On September 23, 2011, the Missouri Legislature voted to repeal the prohibition. The repeal must be signed by Missouri's Governor to become effective.

Source: [Associated Press](#)

United States Department of Education Releases Final Regulations Pertaining to Infants and Toddlers with Disabilities (Part C of the IDEA) and Notice of Proposed Rulemaking Addressing Part B of the IDEA

On September 6, 2011, the U.S. Department of Education issued a press release announcing that it has released final regulations to improve services and outcomes for infants and toddlers with disabilities and their families. The final regulations apply to Part C of the Individuals with Disabilities Education Act ("IDEA") which serves infants and toddlers (until age 2) "with developmental delays or who have diagnosed physical or mental conditions with high probabilities of resulting in developmental delays." According to the press release, the final regulations incorporate the 2004 amendments to Part C of the IDEA, ensure accountability to improve results for impacted infants and toddlers, and focus on improving outcomes for the approximately 35,000 infants and toddlers covered by Part C.

Importantly, the press release also advised the public that the U.S. Department of Education issued a notice of proposed rulemaking to amend Part B of the IDEA. The proposed changes address instances when "a state or local educational agency seeks to use a child's or parent's public benefits or insurance (e.g., Medicaid) to pay for Part B services. These proposed amendments to the Part B regulations would ensure the protection of the rights of parents and children and ensure that children with disabilities receive a free appropriate public education (FAPE) while addressing concerns raised by State educational agencies and local educational agencies regarding the burdens imposed by the current regulation." The notice of proposed rulemaking is available at the following link: [Notice of Proposed Rulemaking](#).

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

The final regulations to Part C of the IDEA are available at the following link: [Final Regulations](#).

Proposed Bill in Florida Addresses Seclusion and Restraint of Students with Disabilities

On August 29, 2011, Florida Senator Anitere Flores filed Senate Bill (SB 144) which addresses restraint and seclusion in public schools and is designed to reduce restraint and seclusion on students with disabilities. SB 144 proposes that manual physical restraint be used only in an emergency when there is an imminent risk of serious injury or death to the student or others. SB 144 also restricts the use of manual physical restraint, prohibits the use of manual physical restraint by uncertified individuals, and requires each school to medically evaluate students after manual physical restraint. Finally, SB 144 calls for a prohibition on placing a student in seclusion and further provides requirements for the use of time-out rooms.

SB 144 significantly amends Section 1003.573, Florida Statutes, which was amended during the 2010 legislative session to include, among other things, additional documentation and reporting requirements. See, [Chapter No. 2010-224](#).

More information related to SB 144 is available at the following link: [SB 144](#).

Florida Senator Siplin Introduces Bill Allowing Prayer in Schools

As many School Districts are aware, prayer in schools is often a source of litigation and community tension. It is also a topic often addressed by Florida's Legislature. On August 29, 2011, Florida Senator Gary Siplin filed Senate Bill 98 (SB 98). SB 98 would authorize School Boards to adopt resolutions that allow prayers of invocation or benediction at secondary school commencement exercises or any other noncompulsory student assembly. SB 98 sets forth the provisions that must be included in any resolution adopted by a School Board.

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

Proposed Florida House Bill Removes Physical Education Requirement in Middle School

On September 26, 2011, Florida Representative Larry Metz filed House Bill 4057 (HB 4057), which addresses physical education in public schools. Perhaps the most controversial aspect of HB 4057 is the deletion of provisions relating to requirements for physical education instruction for students in middle school. HB 4057 does not impact physical education requirements in elementary or high school.

More information related to HB 4057 is available at the following link: [HB 4057](#).

Florida Department of Education Releases Five Memorandums

The Florida Department of Education released five memorandums during the month of September. The memorandums address the following issues (click on title to obtain memorandum):

- [2011 Legislative Changes to How a School's Differentiated Accountability Status is Determined](#);
- [District Virtual Schools & Differentiated Accountability](#);
- [2011 Educational Strategies & Student Engagement Institute](#);
- [District Action Planning Process \(DAPP\) for Implementation of a Multi-tiered System of Support \(MTSS\)](#); and
- [2011 Academic and Career Advisement Webinars](#).

Firm News

Terry J. Harmon presented "Update on Service Animals Under the ADA" at the Florida Bar's Education Law Committee meeting on September 23, 2011. Mr. Harmon's presentation addressed issues relating to service animals under the final regulations implementing the Americans with Disabilities Act for Title II and Title III and recent case law involving service animals. The Education Law Committee meeting was held at the Hilton Walt Disney World Resort in Lake Buena Vista, 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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