SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT
June 2020

U.S. Supreme Court Rules in Favor of Religious Schools

In Espinoza v. Montana, the U.S. Supreme Court heard a challenge to a ruling made by the Montana Supreme Court that invalidated a tax-credit program on the ground that the scholarships created by the program could be used at religious schools. In 2015, the Montana legislature established the program which provides a dollar-for-dollar tax credit of up to $150 for individuals and businesses who donate to private scholarship organizations. The organizations then use the donated money to provide scholarships for students who wanted to attend private schools, including religious schools. However, under a rule announced by the Montana Department of Revenue shortly after the program was passed, families could not use the scholarships at religious schools. The Department explained that the use of funds for religious schools would violate the state constitution's ban on aid for churches and affiliated schools.

Kendra Espinoza, a single mother of two daughters, and two other Montana mothers went to court to challenge the rule. Explaining that they were "counting on" the scholarship money to be able to keep their children in a Christian school, Espinoza argued that the exclusion of religious schools from the program violated the federal constitution. The Montana Supreme Court rejected that argument, holding that the tax-credit program violated the state constitution because families were allowed to use the scholarships at religious schools. Espinoza asked the U.S. Supreme Court to review that ruling.

Today, the U.S. Supreme Court ruled in favor of Espinoza. In a 5-4 opinion authored by Chief Justice Roberts, the U.S. Supreme Court held that the application of the Montana Constitution's "no-aid" provision to a state program providing tuition assistance to parents who send their children to private schools discriminated against religious schools in violation of the Free Exercise Clause. A key point was raised by Chief Justice Roberts, who reinforced the notion that no state is required to subsidize any private education, but if a state does so, "it cannot disqualify some private schools solely because they are religious." In short, the Espinoza ruling stands for the proposition that a state cannot bar religious schools from receiving funding based only on the religious character of the schools.

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

Florida Fiscal Year 2020-2021 Budget

On June 29, 2020, Florida Governor Ron DeSantis approved the Florida Fiscal Year 2020-2021 budget. Importantly, the final budget includes over $1 billion in vetoed spending. The entire budget, including the veto list, is available at the following link: Press Release.

Florida Governor Ron DeSantis Approves Teacher Pay Raise Legislation

On June 24, 2020, Florida Governor Ron DeSantis signed House Bill 641 into law. The impact of the bill is significant in that in provides for, among other things, a $47,500.00 minimum base salary or the maximum amount achievable based on a district's allocation. Under the legislation, "minimum base salary" is "the lowest annual base salary reported on the salary schedule for a full-time classroom teacher."

More information is available at the following links: House Bill 641; flgov.com.

Florida Federal Court Addresses "Appropriate Person" Under Title IX

In Kono v. University of Miami (Case No. 19-22076-Civ-Scola), a former Ph.D. student sued the University alleging it violated Title IX by failing to protect her from sexual harassment committed by her faculty advisor. Under Title IX, a university is not liable for damages unless an official who has authority to address the alleged discrimination has actual knowledge of discrimination and fails to adequately respond. At the onset of the case, the Court dismissed Plaintiff's first Title IX claim against the University, because she failed to identify an "appropriate person" with the "authority to take corrective action to end the discrimination." She then filed an amended complaint with was similarly dismissed.

Ultimately, the Court held that the "appropriate person" identified by the Plaintiff did not have authority over the alleged harasser but instead was "afraid" of the harasser. Without an identified "appropriate person," Plaintiff failed to state a claim under Title IX.

A copy of the opinion is available at the following link: Kono v. University of Miami.

US DOE Sued by 18 Attorneys General to Stop Implementation of New Title IX Regulations

Earlier this month, attorneys general from 17 states and the District of Columbia filed a lawsuit against the U.S. Department of Education to block implementation of the new Title IX regulations. The lawsuit maintains that the new regulations will reduce the protections against predatory behavior and create a discrepancy between the federal and state definitions of "sexual harassment." Moreover, the lawsuit contends that educational institutions will need to overhaul their current systems in less than three months. Proponents of the new regulations argue that they will ensure students accused of sexual harassment receive an appropriate level of due process.

Draft regulations were first posted in 2018 and drew more than 128,000 comments. The final regulations are scheduled to take effect on August 14, 2020.

Source: Insiderhighered.com.

A copy of the lawsuit is available at the following link: Commonwealth of Pennsylvania, et. al. v. Elisabeth D. Devos.

U.S. Department of Education Issues Rule to Ensure CARES Act Funding for Public and Private School Students

On June 25, 2020, U.S. Secretary of Education Betsy DeVos announced the issuance of a rule designed to ensure all students whose learning was impacted by COVID-19 are served equitably by emergency funding authorized by the *Coronavirus Aid, Relief, and Economic Security (CARES) Act,* no matter where they attend school.

Providing equitable services is long-standing law under the Elementary and Secondary Education Act (ESEA). Local education agencies (LEAs) provide no money to private schools under these equitable services provisions; instead, they provide secular, neutral, and non-ideological services to nonpublic schools after consulting with private school leaders about the needs of students and teachers.

Under the CARES Act, LEAs have broad latitude about the use of funds. However, it is expected that most of the emergency funding will go toward COVID-19 related expenses such as equipment to protect student and teacher health, teacher training in remote instruction, and technology to enhance distance education tools. Secretary DeVos believes strongly that students and their educational opportunities have been nearly universally effected by COVID-19, stating "[t]here is nothing in the law Congress passed that would allow districts to discriminate against children and teachers based on private school attendance and employment."

Under the rule, if an LEA chooses to use CARES Act funding for students in all of its public schools, it still must calculate the funds for equitable services based on students enrolled in private schools in the district. However, if an LEA chooses to use CARES Act funding only for students in its Title I schools, it has two options:

1. Calculate the funds for equitable services based on the total number of low-income students in Title I and participating private schools; or
2. Calculate the funds using the LEA's Title I, Part A share from the 2019-2020 school year.

The Interim Final Rule (IFR) has been unofficially published here on the Department's website. Once the rule is officially published in the Federal Register, it will be effective immediately and open for public comment for 30 days.

For more information, please visit the following link: Press Release.

Eighth Circuit Determines District Violated Child Find and Failed to Provide FAPE

A Minnesota student and her parents filed suit alleging that their school district's failure to classify the student as disabled denied her the right to a free appropriate public education (FAPE)

under the Individuals with Disabilities Education Act (IDEA). During administrative proceedings, the administrative law judge (ALJ) concluded that the school district's treatment of the student violated the IDEA and related state special-education laws. A federal district court then denied the school district's motion for judgment on the administrative record and granted, in part, the student's motion for judgment on the record modifying the award of compensatory education.

On appeal, the Eighth Circuit of Appeals held in favor of the student and concluded, among other things, that the school district's evaluation of the student was insufficiently informed and legally deficient, the student is eligible for special education and a state-funded FAPE like every other child with a disability, and that the ALJ and district court were correct in concluding the school district had breached its obligation to identify the student by the spring of her eighth-grade year as a child eligible for special education. The Court also found that the district court did not err in finding plaintiffs were entitled to recover the costs associated with a comprehensive psychological evaluation, educational evaluation and private educational services. The Court also reinstated the ALJ's award of compensatory education costs.

A copy of the opinion is available at the following link: Independent School District No. 283 v. E.M.D.H. (Case No. 19-1269).

US DOE Provides Guidance Related to Resolutions Under IDEA Part B During COVID-19

On June 22, 2020, the Office of Special Education Programs (OSERS) within the U.S. Department of Education released a Q&A guidance document to address the resolution of disputes under the Individuals with Disabilities Education Act (IDEA) during the COVID-19 pandemic. Importantly, the Q&A does not impose any regulatory requirements beyond what the law already requires. Carefully couched as "informal guidance" that "does not establish a policy or rule that would apply in all circumstances," the Department answered seven questions related to dispute resolution. The following are highlights from the Q&A:

- The 60-day time limit to resolve a State complaint can be extended on a case-by-case basis;
- Due process hearings may permit due process hearings to be conducted via-video conference or conference call; and
- Hearing officers may extend timelines for the issuance of decisions on due process complaints.

The Q&A is available at the following link: Department Q&A.

From the Lighter Side: Woman Demands Paternity Test…on Goats

A Florida woman filed a lawsuit recently against her neighbor who sold her several goats, demanding a paternity test on her goats (or a full refund). The woman demanded the paternity test as part of her effort to prove that the goats could be registered with the American Dairy Goat Association. No word yet on the outcome!

Source: Huffington Post.

Firm News

Robert J. Sniffen & Michael P. Spellman have been selected to the 2020 Florida Super Lawyers list. **Terry J. Harmon & Jeffrey D. Slanker** have been selected to the 2020 Florida Rising Stars list.

On June 5, 2020, **Terry J. Harmon** presented "The IDEA, COVID-19 and the 2020-2021 School Year" to the Florida School Board Attorneys Association at its 2020 Spring Mini Virtual Conference.

Michael Spellman presented "Public Employee Considerations During a Declared Emergency" to the Florida Municipal Attorneys Association as a part of its Webinar Series "Public Emergencies & Lessons Learned From COVID-19".

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.