

SNIFFEN & SPELLMAN, P.A.



Education Law Alert

September 2018

Charter School Amendment Stricken From November Ballot

The Florida Supreme Court released a decision to prevent Amendment 8, a proposed amendment created by the Constitutional Revision Commission (CRC) earlier this year, from being presented to voters on the November 6 statewide ballot. The amendment proposed to create a new category of public schools not controlled by local school boards, which would allow the state to supervise charter schools. In addition, Amendment 8 proposed to establish term limits on school board members statewide.

The League of Women Voters of Florida challenged the amendment, arguing that the CRC hid the intention of creating state-monitored charter schools by not using the word “charter school” in the language of the amendment. Further, the League argued that the CRC bundled the misleading language with the popular topic of school board term limits to get it past voters. Supporters of the proposed amendment argued that the decision should have been left up to the voters to decide. Nevertheless, in a 4-3 decision the Florida Supreme Court struck the amendment from the ballot.

Read more about this decision [here](#).

Sixth Circuit Expands Due Process Rights in Title IX Cases

The U.S. Court of Appeals for the Sixth Circuit recently held that in conducting Title IX investigations, colleges and universities are required to provide parties an opportunity to cross-examine witnesses in the presence of a neutral fact-finder in cases hinging on the credibility of such witnesses. *Doe v. Baum, et al.*, Case No. 17-2213 (6th Cir. Sept. 7, 2018).

The case arose from an investigation conducted by the University of Michigan of allegations that the Plaintiff committed sexual assault at a fraternity party. The University conducted an investigation which included interviews of 25 witnesses including the Claimant and Respondent/Plaintiff. The statements from witnesses were conflicting and the investigator's report did not support a finding of misconduct. The Claimant appealed the determination, and the University's appeals board reversed the finding determining the Claimant and her witnesses were credible and persuasive.

The Plaintiff withdrew from the University and filed a lawsuit alleging the University violated his constitutional due process rights by failing to provide him with a hearing and the ability to cross-examine witnesses. The Plaintiff also alleged violations of Title IX.

The Court of Appeals determined that in a situation where a University is faced with competing narratives, the administration must provide some manner of cross-examination in order to satisfy due process. The Court also noted that in limited instances when determination does not rely on any testimonial evidence or the respondent admits to engaging in the misconduct, would it be permissible to deny cross-examination.

To read more, click [here](#).

Can a Male Coach Bring a Title IX Discrimination Claim?

In 2016, the State University of New York at Albany terminated the women's tennis program. The team was coached by a male, Gordon Graham ("Graham") who was informed that his contract would not be renewed when it expired. Graham filed a complaint with the federal Office of Civil Rights ("OCR") alleging that termination of the women's tennis program violated Title IX. The OCR found the complaint substantiated. Graham, as well as several players filed suit.

In the federal lawsuit Graham alleged the termination of the women's tennis program was discrimination on the basis of the sex of the women he coached, causing him harm. The University moved to dismiss arguing the alleged discrimination was not based on his sex, but on the sex of his players.

Judge McAvoy of the Northern District of New York rejected the University's argument. He acknowledged when dealing with anti-discrimination laws, the key issue is the reason for the treatment of the individual, not the treatment of different groups in the workplace. Judge McAvoy determined that Graham was claiming that he, not just the women student-athletes, suffered gender discrimination because of the termination of the tennis program.

Although this lawsuit is in the early stages this bears following because if Graham ultimately prevails the scope of Title IX could broaden to include male employees associated with women's programs.

To read more, click [here](#).

Student-Athlete Compensation Case Begins

On September 4th a bench trial began in what is considered the strongest legal challenge to the principle of amateurism to date. The consolidated cases of *Jenkins v. NCAA* and *In Re Athletic Grant-In-Aid Cap Antitrust Litigation* are being heard before Judge Claudia Wilkin of the U.S. District Court for the Northern District of California.

This case was originally filed back in March of 2014 by Plaintiff's that include three classes of current and former NCAA Division I college athletes from men's and women's college basketball. The Plaintiffs are challenging the NCAA's grant-in-aid cap, raising allegations of price-fixing and a restraint of trade on the market for athletic scholarships, in violation of Section 1 of the Sherman Act.

To read more, click [here](#).

DeVos approves Florida's ESSA Plan

On September 26, 2018, U.S. Secretary of Education approved Florida's Every Student Succeeds Act (ESSA) Plan, making it the final state to receive approval from the Department of Education. Notably, the Florida ESSA Plan includes plans to increase school access to migratory and homeless children, improve graduation rates, and address disparities in education between different races. Interestingly, Florida's ESSA Plan indicates that it does not intend to offer standardized testing in any language other than English, and cites Article II, Section 9 of the Florida Constitution as justification for this provision.

To read the announcement released by the U.S. Department of Education regarding Florida's ESSA plan, please click [here](#).

From the Lighter Side: Baking While Intoxicated

A Niceville, Florida man and spirits enthusiast burned down his house while attempting to make cookies on the ultimate baking tool, a George Foreman grill. The fire department arrived on scene and the naked man opened the door, stated "I'm sorry," and closed the door. Police were eventually able to remove the man before he succumbed to excess smoke inhalation. Baking seemed like a good idea after the consumption of two liters of vodka and smoking marijuana. The fire started after the cookies had been left unattended for too long, the man attempted to suppress the blaze with dry towels, however, they too caught fire.

To read more, click [here](#).