

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT January 2020

U.S. Supreme Court Case May Impact Florida School Choice

On January 22, 2020, the United States Supreme Court held oral arguments in a case with national and local importance for the landscape of education law and school choice in Florida. In Espinoza v. Montana Department of Revenue, (Case No. 18-1195), the Supreme Court is considering whether states may maintain scholarship or student aid programs that are religiously neutral, but permit the expenditure of public funds to be used at religious schools. Florida, in fact, has just such a program.

The specific issue pending before the Supreme Court in Espinoza is whether it violates the United States Constitution, and specifically the Equal Protection and Free Exercise of Religion Clauses of the Constitution, to invalidate a generally available and religiously neutral student aid program because the program affords students the choice of attending religious schools.

The Supreme Court held oral arguments in Espinoza on January 22, 2020. From the oral arguments, it seemed that the Supreme Court was divided on a potential outcome. Advocates for the petitioners faced questions concerning the merits of their position, but also whether the petitioners, parents that utilize the scholarship funds for their children, had standing to challenge the decision of the Montana Supreme Court. Questions on the merits portend that petitioner might have persuaded Justices Alito and Kavanaugh, but not Ginsburg, Sotomayor and Kagan who seemed to ask questions hostile to petitioner's arguments. Obviously, only time will tell. A decision is expected in June, 2020.

Audio and transcripts from the oral arguments are available at the following link: [Espinoza](#).

U.S. Department of Education Opens Civil Rights Compliance Center

On January 21, 2020, U.S. Department of Education ("US DOE") Secretary Betsy DeVos announced the creation of the "OPEN Center," an office within the Office for Civil Rights charged with focusing on "Outreach, Prevention, Education and Non-discrimination to Promote Equal Access in Education." The OPEN Center is designed to provide technical assistance prior to the filing of a complaint with OCR. A press release from US DOE further states:

The OPEN Center, established within OCR headquarters, will provide OCR with a dedicated team that focuses on education, prevention, and outreach. It will also provide for improved technical assistance to recipients and the public through a dedicated team to ensure that technical assistance is high-quality, accurate, thorough, and legally sound. The OPEN Center will be staffed by OCR civil rights

attorneys and will be led by Acting Director, Christian Corrigan. OPEN Center inquiries can be sent to OPEN@ed.gov.

The US DOE press release related to the creation of the OPEN Center is available at the following link: [US DOE](#).

U.S. Department of Education Publishes Proposed Rule Regarding Religious Organizations/Faith-Based Institutions and New Guidance Regarding School Prayer

On January 16, 2020, U.S. DOE released a proposed rule addressing “equal treatment and constitutional rights of religious organizations and faith-based institutions, as well as First Amendment freedoms owed to students on campus” and announced the release of guidance related to school prayer. Education law practitioners are certainly encouraged to review these new releases.

The US DOE press release, with links to the proposed rule and guidance document, is available at the following link: [US DOE](#).

School District Violates IDEA for Failing to Timely Conduct Manifestation Determination

In Vilonia Sch. Dist. v. M.S., 4:18-CV-00219-KGB, 2019 WL 4853620 (E.D. Ark. Sept. 30, 2019), the Court addressed whether a school district’s delay in conducting a manifestation determination was a violation of the Individuals with Disabilities Education Act (“IDEA”). According to the decision, the school district delayed the meeting twice as a result of the student’s parents’ actions. The meeting was delayed the first time, because the parents wanted their child’s medical providers present at the meeting. The second meeting was delayed after the parents elected to file due process. As a result, the meeting was not held within 10 days as is required under the IDEA. Ultimately, the Court held against the School District, stating as follows:

...School District does not present any evidence or case law to support its argument that the Hearing Officer’s implication that School District was at fault for not completing the manifestation determination review is a reason to find the Hearing Officer’s decision erroneous. The School District has failed to meet its burden of proof on this issue. For these reasons, the Court agrees with the decision of the Hearing Officer and does not find his determination that School District did not allow A.R.S. to return to school after the ten-day suspension, even though a manifestation determination review was not completed, was erroneous.

A copy of the opinion is available at the following link: [Vilonia Sch. Dist. v. M.S.](#)

Seclusion of Students Completely Prohibited Under Proposed Florida Law

HB 1231, filed on January 9, 2020, completely prohibits the use of seclusion on students. Under the proposed law, “seclusion” is defined as “the involuntary confinement of a student in a room or area alone and preventing the student from leaving the room or area. The term does not include time-out used as a behavior management technique intended to calm a student.” The bill further

includes provisions for training related to restraint and the implementation of positive behavioral techniques. Interestingly, the bill also requires schools to install video cameras in any self-contained ESE classroom at the request of a parent.

More information is available at the following link: [HB 1231](#).

Proposed Legislation Extends Protections to Florida Virtual School

On January 10, 2020, a bill (SB 1746) was proposed that expressly recognizes Florida Virtual School as an agency of the State of Florida, and provides that FLVS, its Board of Trustees, officers, and employees are entitled to sovereign immunity pursuant to F.S. § 768.28. The bill also reduces the size of FLVS's Board of Trustees from 7 to 5, further places restrictions on trustee terms, and addresses several other issues related to FLVS and virtual instruction.

More information is available at the following link: [SB 1746](#).

Proposed Legislation Mandates New Instruction/Programs...and...Withholding a Superintendent's Salary for Failures to do so

SB 1660, titled "Required Instruction," requires school districts, charter schools, and specified private schools to annual verify that they have provided instruction in the history of the Holocaust and the history of African Americans (beginning in the 2021-2022 school year). The bill also contains numerous requirements for the implementation of programs related to the history of the Holocaust and the history of African Americans. The bill provides as follows (emphasis added):

By August 1, 2021, and annually thereafter, each district school superintendent, charter school principal, and private school director or similar position shall provide to the department, in a format prescribed by the department, evidence of school district, charter school, and private school compliance with subsection (2). However, *if a district school superintendent fails to provide such evidence, his or her salary must be withheld until he or she provides such evidence.*

More information is available at the following link: [SB 1660](#).

From the Lighter Side: Lawyer Really Wants to See the Kansas City Chiefs in the Super Bowl

Kansas City lawyer Denise Kirby really wants to see her beloved Kansas City Chiefs play in the upcoming Super Bowl. In October of 2019, Ms. Kirby advised the judge before whom she was appearing that she would be unavailable in February, because she would be at the Super Bowl watching the Chiefs. Well, due to the stellar play of Quarterback Patrick Mahomes and the rest of the Chiefs team, the Chiefs played their way into the big game which is set for February 2, 2020. Unfortunately for Ms. Kirby, she was also scheduled to represent a client in trial on February 3, 2020 – the day after the Super Bowl. Riding high on her October prediction, Ms. Kirby filed a hilarious motion requesting that her trial be continued – and the judge obliged!

Source: KULR8.com (a copy of the motion is available in the article).

Firm News

On January 23, 2020, **Terry J. Harmon** presented “Navigating Manifestation Determination Reviews to Avoid Compliance Pitfalls” in a nationally-broadcast webinar through LRP Publications.

On January 24, 2020, **Terry J. Harmon** presented “Children with Special Needs” at the Education Review Workshop webinar sponsored by the Florida Bar Education Law Committee.

Past Issues of the Education Law Alert Available on Website

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