

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT

February 2014

Surge in Title IX Litigation and Enforcement Continues: Northwestern University Sued/University of Michigan and Michigan State University Investigated by OCR

On February 10, 2014, Northwestern University (“Northwestern”) was sued by a current student alleging Northwestern acted with deliberate indifference and retaliated against her in relation to its handling of her sexual assault complaint against a professor. The student further claims Northwestern violated Title IX by failing to take sufficient and meaningful corrective and remedial action. Plaintiff seeks compensatory and punitive damages as well as attorney’s fees and costs.

In addition to the lawsuit at Northwestern, the U.S. Department of Education’s Office for Civil Rights (“OCR”) is currently investigating the University of Michigan and Michigan State University regarding their handling of sexual assaults.

Title IX in the college and university setting has typically been viewed as federal legislation addressing gender equality in intercollegiate athletics. However, the case against Northwestern and current investigations of Michigan and Michigan State are examples of the wave of Title IX lawsuits and federal investigations against colleges and universities related to the handling of sexual assaults. Colleges and universities must take a proactive approach by reviewing their policies and procedures to avoid liability in this emerging area of Title IX.

Source: [Medill Reports](#); [The Detroit News](#); [Bloomberg](#).

U.S. Department of Education Issues Guidance on Student Privacy and the Use of Educational Technology in the Classroom

This month, the U.S. Department of Education’s Privacy Technical Assistance Center (“PTAC”) released an important document addressing the protection of student privacy while using online educational services. The 14-page document (titled, “Protecting Student Privacy While Using Online Educational Services”) addresses, among other things, online educational services, the Family Educational Rights and Privacy Act (“FERPA”), the Protection of Pupil Rights Amendment (“PPRA”), and best practices. The U.S. Department of Education is holding a joint webinar with PTAC on March 13, 2014, to review the guidance document and solicit public input.

The guidance document and information pertaining to the joint webinar is available at the following link: [PTAC](#).

Proposed Florida Legislation Adds Disqualifying Offenses for Individuals Seeking Educator Certification and Certain School Employment

Aspiring educators in Florida need to pay close attention to House Bill 707 (“HB 707”). HB 707 adds additional offenses that disqualify applicants for educator certification or employment in Florida. The proposed legislation disqualifies applicants found to have committed, among other things, the following felony offenses:

- Section 39.205, relating to failure to report child abuse, abandonment, or neglect;
- Section 775.085, relating to evidencing prejudice while committing offense, if reclassified as a felony;
- Section 782.051, relating to attempted felony murder;
- Section 782.09(1), relating to killing of unborn quick child by injury to mother;
- Section 787.06, relating to human trafficking;
- Section 790.166, relating to weapons of mass destruction;
- Section 838.015, relating to bribery;
- Section 859.01, relating to poisoning food or water; and
- Section 876.32, relating to treason.

More information related to the proposed legislation is available at the following link: [HB 707](#).

Search Process for Leaders of Florida’s Higher Education Institutions May Become Shaded from the Public

Florida House Bill 135 (“HB 135”) would create public records and Sunshine exemptions for documents and meetings involving the search process for presidents, provosts, and deans at state universities and Florida College System institutions. If passed, HB 135 would create a statute designed to keep confidential all information identifying or vetting applicants for these positions, except in limited circumstances. The exemptions would cover the process up to the time a final list of applicants has been determined. The names and applications of the finalists would be released no later than 21 days before the final vote or action is to be taken. The information of those who did not make the final cut would remain confidential and privileged. The exemptions would further exempt search committees and consultants who often make initial contact with applicants. So far the bill has had little resistance.

More information related to the proposed legislation is available at the following link: [HB 135](#).

Expulsion Over Threatening Tweets Upheld (Michigan)

A high school freshman (C.Y.) at Lakeview High School (“School”) in Michigan sent menacing tweets to a classmate (A.B.) threatening to stab her. C.Y. also told another classmate that she brought a steak knife to school and planned to stab A.B. The Assistant Vice Principal (Heather Huber) was alerted to the threat and tried to speak with C.Y. who already left school. Huber

spoke with A.B. and took statements from the other students who overheard the threats. At a meeting with C.Y. and her mother the following day, Huber suspended C.Y. after she admitted threatening A.B. and sending the tweets. C.Y. denied bringing a knife to school.

A pre-expulsion hearing was held with Superintendent Karl Paulson. C.Y. was advised of the evidence against her and also allowed to question Huber. Paulson also questioned both Huber and C.Y. At a subsequent expulsion hearing, C.Y. answered questions from the Board, submitted a written statement from her psychologist, and read a statement from her brother who was not permitted to testify. The Board voted to expel C.Y.

C.Y. filed suit claiming she was denied due process at both the suspension and expulsion hearings. A federal court in Michigan granted summary judgment for the Board. On appeal to the Sixth Circuit Court of Appeals, C.Y. argued summary judgment should not have been granted, because there was a fact issue as to when she was suspended and what procedural due process was required. C.Y. argued if she was suspended without being informed of the allegations and given an opportunity to respond, such procedure violated Goss v. Lopez, 419 U.S. 565 (1975). The Court disagreed and found a student may be removed and the "... necessary hearing and rudimentary notice provided as soon as practicable" where a continuing danger is posed by the student's presence. The Court found Huber's actions reasonable and not in violation of Goss.

C.Y. further argued that she was denied procedural safeguards at the expulsion hearing, including the right to read the witness statements and Huber's report. The Court found C.Y. had been provided the substance of the witness statements and content of the report repeatedly and no essential facts were withheld. The Court ultimately affirmed summary judgment in favor of the Board and, in doing so, rejected numerous other argument raised by C.Y. Importantly, the Court held students do not have a due process right to an attorney at an expulsion hearing much less a right to be advised that they are entitled to an attorney.

The Court's opinion is available at the following link: [C.Y. v. Lakeview Public Schools](#).

Maine Supreme Court Rules in Favor of Transgender Girl in School Bathroom Case

The Maine Supreme Judicial Court guaranteed the right of transgendered student to use the school bathroom designated for the gender with which he or she identifies. The incident that sparked the court case began in 2007 when a student, who was born male but identifies as female, was forced to stop using the girls' bathroom. She was told to use a staff bathroom after the grandfather of a male student complained.

The Court concluded that the District violated the Maine Human Rights Act ("MHRA") which bans discrimination based on sexual orientation or gender identity. It is the first time any court in the nation has ruled it is unlawful to force a transgender student to use the school bathroom designated for their birth gender rather than the one with which the student identifies. "Our opinion must not be read to require schools to permit students casual access to any bathroom of their choice," Justice Warren Silver wrote for the majority. "Decisions about how to address students' legitimate gender identity issues are not to be taken lightly. Where, as here, it has been

clearly established that a student's psychological well-being and educational success depend upon being permitted to use the communal bathroom consistent with her gender identity, denying access to the appropriate bathroom constitutes sexual orientation discrimination in violation of the MHRA."

A copy of the Court's opinion is available at the following link: [Doe v. Regional School Unit 26](#).

Honor Student/Class President/Caring Brother Contemplates Lawsuit Following Suspension for Confronting Football Player (California)

Dominic Conti ("Conti") is asking to be reinstated as Class President and that his five-day suspension be removed from his educational record for trying to protect his sister from alleged sexual harassment committed by a football player. The harassment was so severe that Conti's sister repeatedly complained to school officials and sought a restraining order in October 2013. The penalties were imposed after Conti and his father found a security guard, confronted the football player at school, and engaged in a physical altercation. The parties to the altercation disputed who threw the first punch.

The football player was suspended for two days and remains on the football team. Conti was stripped of his Class President title, barred from all extracurricular activities, and suspended for five days. The Contis contend that the School and Board are trying to protect the School's prestigious football program. In August of 2013, the team was caught in an alleged hazing incident resulting in an arrest of a player for sexual assault, but the charges were later dropped.

Source: [CBS](#).

From the Lighter Side: Dumb Starbucks...Fun While it Lasted

For all you coffee lovers, Dumb Starbucks Coffee has been shut down for lack of a permit. The store was the brainchild of Nathan Fielder of Comedy Central fame. The store offered everything from "Dumb Espressos," "Dumb Frappuccinos," and other "Dumb" concoctions as well as "Dumb Norah Jones Duet" CD's. The (Smart) Starbucks however was not amused, conveying through a representative, "while we appreciate the humor, they cannot use our name which is a protected trademark".

Fans loved the idea and flocked to the store only to be disappointed by the taste of its brew, described by patrons as "horrible" and "bitter."

Source: [New York Daily News](#).

Firm News

Hetal H. Desai of **Sniffen & Spellman, P.A.** presented *FMLA Update and Issues* at the Florida Public Employer Relations Association Conference on February 11, 2014 in Orlando, Florida.

Hetal H. Desai of **Sniffen & Spellman, P.A.** presented *The Who, What, Where, and Why of the Age Discrimination in Employment Act* at the Elder Law Certification Review on January 17 and 18, 2014, in Orlando, Florida.

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.