



## Education Law Alert October 2014

### US DOE Issues Press Release and Guidance Addressing Equal Access to Educational Resources

On October 1, 2014, the U.S. Department of Education (“US DOE”) issued a press release and Dear Colleague Letter providing guidance to schools regarding their responsibilities to provide all students with equal access to educational resources. The lengthy Dear Colleague Letter was issued by the Assistant Secretary for the US DOE’s Office for Civil Rights (“OCR”). The Dear Colleague Letter highlights issues pertaining to equal access and the standards set forth in Title VII of the Civil Rights Act of 1964 (“Title VII”). As additional background information addressing the information contained in the Dear Colleague Letter, the following is quoted from the press release:

The guidance is intended to provide superintendents and other school district officials with information regarding the requirements on educational resources, how OCR investigates resource disparities and what states, school districts and schools can do to meet their obligations to all students. Under Title VI, states, school districts and schools must not intentionally treat students differently based on race, color or national origin in providing educational resources. In addition, they must not implement policies or practices for providing educational resources that disproportionately affect students of a particular race, color or national origin, absent a substantial justification. The law does not require that all students receive the exact same resources to have an equal chance to learn and achieve. It does, however, require that all students have equal access to comparable resources in light of their educational needs.

The press release, which includes a link to the Dear Colleague Letter, is available at the following link: [Press Release](#)

### Parents May Face Liability for Child’s Creation of Fake Facebook Account Posing as Another Student

In Boston v. Athearn (Case No. JE-049), plaintiff, a minor, brought an action against defendant (also a minor, age 13), defendant’s parents, and others alleging defendant defamed plaintiff when, posing as her, he created a Facebook account and profile and posted statements and photographs. Then fake account included racists viewpoints, offensive comments, statements that plaintiff was on medication for mental health issues, statements that plaintiff used illegal drugs, a homosexual orientation, and invitations to plaintiff’s friends to become Facebook “Friends” with plaintiff. The account exceeded 70 Facebook Friends.

Plaintiff discovered the fake account and notified the school. Both plaintiff and his friend admitting to being involved and were assigned to in-school suspension for two days. The school sent notice home to plaintiff’s parents informing them of the reasons for the discipline. Thereafter, for a period of 11 months, the Court summarized defendant’s parents’ actions as follows:

The [parents] made no attempt to view the unauthorized page, and they took no action to determine the content of the false, profane, and ethnically offensive information that [defendant] was charged with electronically distributing. They did not attempt to learn to whom [defendant] had distributed the false and offensive information or whether the distribution was ongoing. They did not tell [defendant] to delete the page. Furthermore, they made no attempt to determine whether the false and offensive information [defendant] was charged with distributing could be corrected, deleted, or retracted.

Defendant’s parents filed a motion for summary judgment which was granted by the lower court. However, on appeal, plaintiff argued that material facts remain regarding whether defendant’s parents “breached a duty to supervise their child’s use of a computer and an Internet account,” among other issues. Ultimately, the Court found that it was error for the lower court to have entered summary judgment in favor of defendant’s parents, reasoning as follows:

We conclude that a reasonable jury could find that, after learning on May 10, 2011, of [defendant’s] recent misconduct in the use of the computer and Internet account, the [parents] failed to exercise due care in supervising and controlling such activity going forward. Given that the false and offensive statements remained on display, and continued to reach readers, for an additional eleven months, we conclude that a jury could find that the [parents’] negligence proximately caused some part of the injury [plaintiff] sustained from [defendant’s] actions (and inactions).

A copy of the opinion is available at the following link: [Boston](#)

### Hazing Forces Cancellation of New Jersey School’s Football Season

Concerns over alleged sexual hazing incidents in Sayreville War Memorial High School’s (NJ) locker room have forced the school to cancel the remainder of its football season. The allegations involve restraint of freshman football players and digital penetration. The Superintendent cancelled the football season after the evidence reflected that the incidents took place on a pervasive, wide-scale level. Additionally, seven students have been criminally charged for their involvement.

Florida school districts should also be aware that the Florida Legislature in 2014 adopted legislation ([Senate Bill 850, Chapter Law No. 2014-184](#)) mandating that all school districts adopt hazing policies. The mandated hazing policy requirement is now set forth in [F.S. 1006.135](#).

Sources: [People.com](#); [NJ.com](#)

### Lawyers (ACLU) in I ♥ Boobies! Bracelet Case to Receive \$385,000.00 in Legal Fees

The Easton Area School District (“Easton”) recently agreed to pay legal fees to lawyers for the American Civil Liberties Union (“ACLU”) who represented Plaintiffs in the case nationally known as the “I ♥ Boobies! Bracelet Case.” Fairly summarized, the case arose after two middle school students successfully challenged Easton’s policy banning cancer awareness bracelets from being worn in school. Since Plaintiffs prevailed, the ACLU was entitled to an award of legal fees. The ACLU originally sought \$495,000.00 but settled for \$385,000.00.

Source: [The Morning Call](#)

### University of Alabama Threatened With Title IX Lawsuit by Former Athlete

The University of Alabama (“UA”) joins a lengthy, growing list of colleges and universities facing Title IX issues. A former women’s basketball player named Daisha Simmons (“Simmons”) sent a [letter](#) through her legal counsel alleging numerous Title IX violations. A portion of her lawyer’s letter alleges as follows (quoted):

Information has come to my attention that strongly suggests that your Women’s Basketball coaching staff has utilized student-athlete athletic financial aid to engage in a fairly broad and comprehensive pattern of bullying, harassment, retaliatory conduct and institutional hazing. Further, in light of the manner in which athletic financial aid is administered by this coaching staff, there are strong implications of conduct that violates Title IX. During this staff’s tenure, multiple players were deprived of athletic financial aid for reasons that were entirely unrelated to either academic performance or student conduct issues. Further, the manner by which transfers, non-renewals of athletic financial, transfer releases and “waiver supports” have been handled by the basketball staff appear to disproportionately and adversely impact female student-athletes. As you are undoubtedly aware, this may violate federal law.

Your athletic department (through the Women’s Basketball staff) has engaged in a pattern of conduct that was calculated to intimidate and harass female student-athletes. This won’t be tolerated further.

Simmons is now enrolled at Seton Hall.

Sources: [CBS Sports](#); [NY Daily News](#)

### Ninth Circuit Affirms Title IX Equal Participation and Retaliation Award

In Ollier v. Sweetwater Union High School District (Case No. 12-56348), the Ninth Circuit Court of Appeals affirmed a district court’s findings in favor of plaintiffs, a class of female athletes, who sued their school district for unlawful sex discrimination and retaliation under Title IX. The district court granted partial summary judgment in favor of plaintiffs with respect to their equal participation claim since the school district failed to establish substantial proportionality. During a ten-year period, there was at least a 6.7% disparity between male and female participation and enrollment, and the school district failed to meet each prong of Title IX’s three-prong compliance test. After a bench-trial, the judge found in favor of the plaintiffs on their claim that females received unequal treatment and benefits. Specifically, the judge found that the school district failed in several areas including, but not limited to, recruiting, training, equipment, scheduling, and fundraising.

The Ninth Circuit also affirmed the district court’s finding that the plaintiffs had standing to bring a Title IX retaliation claim and that the school district retaliated against plaintiffs in the following ways: (a) firing their coach after the coach and students lodged complaints about unfair treatment; (b) stripping the team of assistant coaches; (c) canceling the team’s annual banquet; (d) prohibiting parents from volunteering; and (e) not allowing the team to participate in a tournament where recruiters would be in attendance.

A copy of the opinion is available at the following link: [Ollier](#)

### Parents of Bullied Student Sue Public School for Student’s Suicide

The parents of a 12-year-old student who committed suicide after enduring numerous instances of bullying have filed a lawsuit against a public school in Chicago. The family alleges that the school was aware of the bullying and unfair treatment but did nothing to address it. The parents also allege that the school failed to inform police or juvenile authorities of the assaults, harassment and other violent behaviors that took place on the school premises prior to the student’s suicide. The school district launched an investigation which concluded that there was no credible evidence of bullying.

Source: [Chicago Tribune](#)

### California’s Affirmative Consent Law

The “affirmative consent law” requires every college in California to adopt a policy which requires college students to obtain “affirmative, conscious and voluntary agreement to engage in sexual activity.” Failure to adopt such a policy may result in an institution losing state financial aid. Among the trickier provisions, the law provides that the agreement to consent can be verbal or communicated through actions. Additionally, consenting to one activity does not mean consent to another.

Some colleges and universities who have previously instituted “affirmative consent” policies say it does change attitudes. At the University of Texas at Austin, there has been an increase in the number of reported sexual assaults and relationship violence since adoption of an affirmative consent policy last year. Jane Bost, associate director of the University’s counseling and mental health center, commented, “culture change is generally slow, but we have made some headway.”

Melissa Tumas, a sexual assault specialist at the University of Washington, which does not have an affirmative consent policy was less hopeful saying, “a perpetrator is ignoring consent. Will a definition deter perpetrators? I’m not sure unless it helps shore up community support that this isn’t OK.”

Source: [The New York Times](#).

### National Principal of the Year Announced

The National Association of Secondary School Principals (“NASSP”) recently announced that Jayne Ellspermann has been named the 2015 National Principal of the Year. Ms. Ellspermann is the Principal at West Port High in Marion County, Florida. Ms. Ellspermann has been Principal at West Port High for 10 years. In addition to the award and recognition, she will receive a \$3,000.00 grant.

Source: [News 13](#)

### From the Lighter Side: Red Bull Does Not Give You Wings

Red Bull gives you wings. The commercials were catchy. Pretty much everyone has seen at least one of the commercials. If you have not, here is a [sample](#). While it seems rather obvious that Red Bull does not allow you to literally grow wings, it did not stop a class action from being filed alleging the company engaged in false advertising regarding the ability of the product to improve concentration and athletic performance. While Red Bull agreed to pay \$13,000,000.00 to settle the class action lawsuit, it did not admit wrongdoing.

Source: [Fox News](#).

### 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.

### Firm News



**Robert J. Sniffen** recently presented “Issues and Trends in Title VII and the FCRA” at the 40th Annual PERL Conference, held in Orlando, FL.



*Sniffen & Spellman, P.A.* participated in the *Early Learning Coalition of the Big Bend’s* “Race 4 Readiness” to help support early learning initiatives in the Big Bend region. Our own **Charlotte Homme** placed 50 out of 200 in the 5k race.



It goes without saying that we love our pets here at *Sniffen & Spellman, P.A.* We are proud to be a “Gold Paw Sponsor” for the *Leon County Humane Society*. Be sure to keep an eye out for Maggie and Ocean in the 2015 Paw Prints Calendar!



**Maureen McCarthy Daughton** and **Mark Logan** hosted *WFSU-FM’s* Pledge Drive on October 22, 2014. Thank you to all who supported *Sniffen & Spellman, P.A.* and *WFSU* during this event.



*Sniffen & Spellman, P.A.* was proud to sponsor and participate in the *Making Strides Against Breast Cancer* Walk on October 19, 2014 at Cascades Park. A special thanks is due to our Legal Assistant, **Teri S. Wolfe**, who worked tirelessly on the *Making Strides Against Breast Cancer* committee to help make this event happen.