

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT May 2015

Congress Begins Push to Pass Campus Accountability and Safety Act

Senators and representatives on both sides of the aisle are determined to impose a greater compliance burden on higher education as it pertains to preventing and investigating sexual violence on college campuses. Earlier this month, a group of senators re-introduced the Campus Accountability and Safety Act (“CASA”), and then the House version of the bill was introduced a week later. Both bills are now pending in their respective chamber.

Scott Coffina recently delineated in *The National Law Review* seven things to know about the CASA should it be passed into law:

- Broader reporting of sexual assault incidents would be required
- Schools would be required to conduct and publish campus climate surveys every two years
- Schools would be required to enter into a memorandum of understanding with local law enforcement to delegate each entity’s responsibilities and protocol regarding sexual assault investigations, training, and communication
- Sections of the Department of Education’s Title IX guidance would be codified, including an explanation of who is responsible for reporting sexual violence incidents
- Fines for violations would increase dramatically
- Schools under Title IX investigation would be publicly identified
- Grants up to \$500,000 would be awarded with preference given to smaller schools that show a dedication to addressing sexual violence on campus issues

The reintroduction of the CASA in the Senate and its House counterpart are examples of increased scrutiny and interest on protecting college students from sexual violence. Over the years, the Obama administration and the Department of Education have focused on how schools address sexual violence. The spotlight will continue to grow with the inundation of sex-related crimes around the country making national news.

Source: [The National Law Review](#).

FL DOE Publishes New Guidelines Related to Service Animals

On May 15, 2015, the Florida Department of Education (“FL DOE”) published *Updated Guidelines for the Use of Service Animals by Students with Disabilities, 2015*. FL DOE issued the guidelines to provide information to school districts for use in drafting their policies and

procedures related to service animals. The guidelines also include a sample template. Of note, FL DOE points out in the document the following important pieces of information (quoted):

- According to OCR and DOJ, whether a student with a disability may bring his or her service animal to school does not depend upon whether the animal is necessary to provide the student FAPE (e.g., it does not matter that the student’s paraprofessional can provide the student the same assistance).
- The fact that other students or school staff have allergies to, or a fear of the animal, is not relevant to the inquiry, according to DOJ.
- Certification or proof of service animal training, licensing or things such as immunization beyond the required rabies vaccination, health or cleanliness cannot be required in the process of determining whether a request will be granted. However, such information may be requested.
- The only allowable reasons for denying a proper request for a service animal to attend school with a student with a disability or asking that a service animal be removed from school premises are: 1) the animal is out of control and the animal’s handler does not take effective action to control it; 2) the animal is not housebroken; 3) the animal’s presence poses a “direct threat” to the health or safety of others, based upon an individualized assessment; or 4) the animal’s presence would constitute a “fundamental alteration” to the nature of the services, program or activity provided by the school.

A copy of the publication is available at the following link: [*Updated Guidelines for the Use of Service Animals by Students with Disabilities, 2015.*](#)

UVA Dean Sues Rolling Stone Magazine

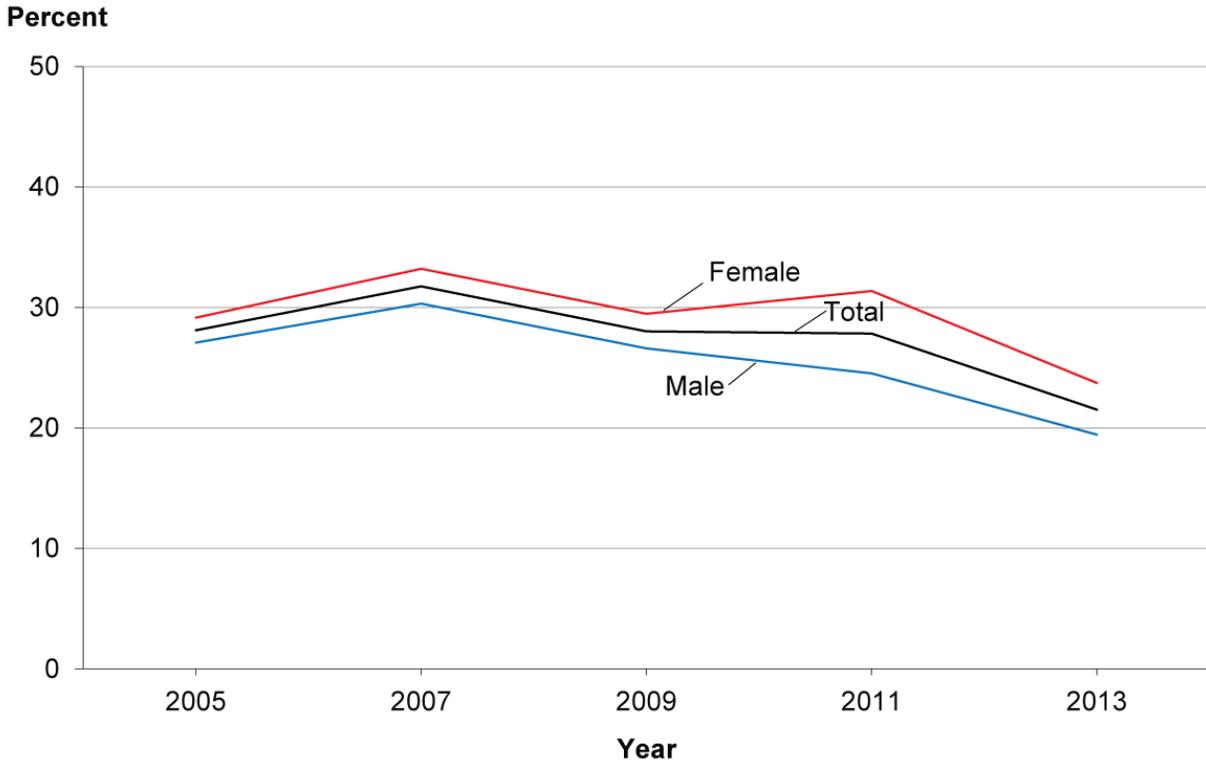
An associate dean at the University of Virginia (“UVA”) recently filed a defamation lawsuit against Rolling Stone magazine, Wenner Media, and Sabrina Erdely. Nicole Eramo claims Erdely wrote an article in 2014 for Rolling Stone that portrayed Eramo in a negative light regarding the alleged 2012 gang rape at the university that drew national attention. The rape allegations involving an UVA fraternity turned out to be false, and Rolling Stone retracted the article shortly thereafter. However, Eramo claims the harm had already been done.

Eramo’s complaint was filed in circuit court in Charlottesville, Virginia and seeks more than \$7.5 million in damages, including \$350,000 in punitive damages. Eramo is the chief administrator at UVA that oversees all sexual assault complaints on campus and claims the article caused emotional distress and damaged her reputation. The article depicted Eramo as one who disregarded the serious rape accusations and would do anything to protect the university’s image. She accuses the magazine, its parent company Wenner Media, and Erdely of acting with actual malice by failing to verify the purported facts surrounding the false rape accusations.

Source: [*ABA Journal*](#)

National Bullying Rates are Declining

For the past several years, the United States Department of Education (“US DOE”) and the State of Florida have issued legislation and guidance in an effort to reduce bullying in schools. It appears nationally that efforts to reduce bullying have been successful. Bullying involving students ages 12-18 reduced to 22%. The following is a graph from the *U.S. Department of Justice, Bureau of Justice Statistics, School Crime Supplement (SCS) to the National Crime Victimization Survey, 2005 through 2013* identifying the percentage of students (ages 12-18) who reported bullying from 2005-2013:



The following 2013 bullying statistics were also contained in the [*U.S. Department of Justice, Bureau of Justice Statistics, School Crime Supplement \(SCS\) to the National Crime Victimization Survey, 2005 through 2013*](#):

- 24% of females ages 12-18 reported being bullied compared to 19% of males;
- White students were the highest percentage of students who reported bullying (24%) compared to Black students (20%), Hispanic students (19%), and Asian students (9%);
- 14% of 12th graders, 20% of 11th graders, 19% of 10th graders, 23% of 9th graders, 22% of 8th graders, 26% of 7th graders, and 28% of 6th graders reported being bullied.

A copy of the report is available at the following link: [US DOE](#).

School District Settles Title IX Complaint with US DOE

The United States Department of Education's ("US DOE") Office for Civil Rights ("OCR") announced in April that it reached an agreement to resolve a Title IX complaint with the LaPorte Community School Corporation (K-12) ("District"). The Title IX issue involved alleged "sexually predatory behavior and sexual harassment of female high school volleyball players." According to OCR, the District failed to "promptly and equitably" respond to a volleyball coach's sexual harassment of players in 2007 and 2008. OCR further noted that the coach made sexual comments and jokes, engaged in a sexual relationship with a player, and "[d]espite contemporaneous reports and eyewitness accounts of the coach's behavior, the [District] failed to conduct a thorough and adequate investigation of the sexual harassment of its students and to effectively address the effects of the sexual harassment on its high school students."

In the press release issued by the US DOE, it was noted that the District agreed to engage in the following as part of the resolution agreement (quoted from press release):

- Issue a statement to the corporation community, including students, parents, administrators and staff, that it does not tolerate sexual harassment and encouraging any student who believes he or she has been subjected to sexual harassment to report the incident(s) to the corporation.
- Review and revise its sexual harassment policies and procedures and its code of conduct to ensure that they adequately address incidents of sexual harassment and provide for the prompt and equitable resolution of sexual harassment complaints.
- Provide effective training to students and staff on the corporation's revised sexual harassment policies and procedures and provide investigation training to staff who are directly involved in handling complaints or other reports of sexual harassment.
- Assess the extent to which employees who had knowledge of reports of sexual harassment of the student in this case failed to take action to report and/or investigate the harassment and implement appropriate discipline against those employees.
- Establish a working group to make recommendations regarding the effectiveness of the corporation's anti-harassment program and conduct a climate survey to assess the effectiveness of the steps taken to assure that its school environment is free from sexual harassment.
- Inform the one student in writing of the findings and outcome of any investigation(s) conducted by the corporation into the reports of sexual harassment of the student and invite her to identify needed remedial services, which may include payment for future counseling and reimbursement for previously received counseling, and then take appropriate remedial actions after OCR approval.
- Complete an investigation of whether other members of the girls' volleyball team were subjected to a sexually hostile environment and, if so, offer appropriate remedial services.

- Convene focus groups of student athletes to discuss any concerns regarding sexual harassment in the corporation's athletic program.
- Provide OCR documentation relating to any complaints or other reports of sexual harassment of students received by the corporation and the corporation's response to the complaints and reports.

Source: [US DOE](#).

Former Iowa High School Football Player Awarded \$1 Million

A former Iowa high school football player was awarded close to \$1 million by a jury after he sued his local school district and a school nurse for allowing him to continue playing football after a pre-existing head injury was discovered and aggravated by a head injury sustained while playing football. Kacey Strough had a condition called "cavernous malformation" which means he had abnormally formed blood vessels in his brain. Strough argued school personnel should have notified his coaches and his family of the potential for injury. Jurors agreed. Strough is now confined to a wheelchair with permanent injuries.

Source: [Insurance Journal](#)

From the Lighter Side: Burglar Falls Asleep on Victim's Couch

Apparently the home burglary business is quite tiresome. A homeowner recently found Timothy Bontrager, who had entered through an unlocked sliding glass door, sleeping on her living room couch around 7 a.m. one morning. She called the police after he awoke and apologized before leaving immediately. The homeowner subsequently realized her wallet, driver's license, credit cards, and personal checks were missing. Bontrager was arrested shortly thereafter when he was seen by law enforcement walking down a nearby street.

Source: [Bradenton Herald](#)

Firm News

Michael P. Spellman presented "Taking the First Steps to Find the Best Candidate: The Zen of Hiring" to almost 200 human resource professionals at the 2015 Legal Conference of the Greater Pensacola Society for Human Resource Management.

On May 18, 2015, **Terry J. Harmon** presented "Common Legal Issues for School Employees" to Bradford County School District school support staff in Starke, Florida, through [The North East Florida Educational Consortium](#).

On May 20, 2015, **Terry J. Harmon** presented "Responding to EEOC and OCR Complaints" and "Education & Labor Law Updates that Impact Union Negotiations" at the [Florida Educational Negotiators](#) 35th Annual Conference in Kissimmee, Florida.

Robert J. Sniffen and **Jeffrey D. Slanker** attended the DRI Employment Law Seminar in Scottsdale, Arizona earlier this month. The Seminar is widely recognized as one of the country's preeminent continuing education programs for employment defense lawyers.

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