

# SNIFFEN & SPELLMAN, P.A.

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## EDUCATION LAW ALERT December 2016

### **New IDEA Federal Regulations Address Disproportionality Issues Based on Race or Ethnicity**

On December 12, 2016, the U.S. Department of Education (DOE) released final regulations under the Individuals with Disabilities Education Act (IDEA) which, according to DOE, are designed to address “a number of issues related to significant disproportionality in the identification, placement, and discipline of students with disabilities based on race or ethnicity.” DOE also released a Dear Colleague Letter and technical assistance documents related to the final regulations.

More information is available at the following link: [DOE Press Release](#).

### **Federal Appeals Court Revives Gay-Straight Alliance Suit in Florida**

On December 5, the Eleventh Circuit overturned a district court ruling that supported the Lake County School Board’s decision to block a gay-straight alliance club. The ruling came after years of litigation stemming back to 2011. The Eleventh Circuit found that the Equal Access Act, which requires federally funded schools to treat all extracurricular clubs and activities similarly, applies to middle school students as well as high school students. The act

Read more [here](#).

### **Ruling: Student Athletes Are Not Employees and Are Not Covered By FLSA**

On December 5, the U.S. District Court for the Southern District of Indiana concluded that student-athletes at the University of Pennsylvania (University) are not employees under to the Fair Labor Standards Act (FLSA). The decision undercuts arguments that student-athletes should be paid as employees.

The case, *Gillian Berger, et al, v. National Collegiate Athletic Association, et al*, was brought by three individuals on the women’s track and field team at the University. The students argued they were employees under the FLSA and entitled to minimum wage for their hours spent performing as student-athletes. The Court disagreed, finding that the correct approach to determine an individual’s status as an employee is the totality of the circumstances, including, in this case, the true nature of the relationship between student-athletes and the University. This is consistent with recent rulings in similar cases.

Read the opinion [here](#).

## **DOE Releases Quarterly Student Aid Updates**

On December 20, the US Department of Education (DOE)'s Federal Student Aid (FSA) office posted updates to its performance data gathered regarding federal student aid. The updated data reflects the DOE's commitment to transparency and to serving students and borrowers. In addition, the DOE released data collected regarding the FSA's feedback system, which was introduced in July 2016 by the executive office.

Read more [here](#).

See the quarterly student report [here](#).

## **Whistleblowers on Campus: Increase in False Claims Act Litigation Aimed Towards Universities**

The False Claims Act, 31 U.S.C. 3729-33 prohibits the submission of false or fraudulent claims to the government. A recent trend shows that many individuals are utilizing the whistleblower provisions of this statute to target federal funding in the university school system.

Specifically, the FCA allows individuals to bring civil actions on behalf of the United States under its whistleblower provisions. Those "relators," as they are known, receive 15 to 25 percent of the overall recovery if the United States government chooses to intervene in the case. Even without government intervention, relators may still choose to proceed with FCA cases and receive the same percent of recovery should they prevail, as well as a separate award for attorney's fees and costs.

These types of FCA cases are becoming increasingly litigated in two contexts: 1) university liability based on false certification of compliance with rules and restrictions placed on receiving taxpayer money; and 2) university liability based on misuse of federal funds.

Universities should be conscientious of these types of claims and, in addition to practicing compliance, maintain a proper whistleblower policy and procedure for investigating allegations related to federal funding.

Read more [here](#).

## **DOE Announces Final Rule on State Authorization of Postsecondary Distance Education**

On December 16, the DOE released its final regulations to improve oversight and protect more than 5.5 million distance education students at degree-granting institutions. The final regulations clarify the state authorization requirements for postsecondary distance education institutions.

In 2006, Congress abolished a rule restricting access to federal student aid for these types of distance learning programs. The number of students enrolled in such programs has increased dramatically since that time. Prior to the 2016 final regulations, there were no federal regulations for distance education providers in states where the institutions themselves were not located. The

new regulations eliminate that problem by setting forth specific requirements for distance learning institutions, including requiring state authorization for the programs and disclosures regarding enrollment to the state.

Read the final regulations [here](#).

Read more [here](#).

### **Firm News**

On December 22, the Eleventh Circuit Court of Appeals affirmed *Luke v. Florida A&M University*, a case successfully defended by Sniffen & Spellman, P.A. in the United States District Court, Northern District of Florida. **Rob Sniffen** and **Lisa Fountain** served as Counsel at both the trial court level and on appeal.

**Rob Sniffen** presented “Make the FLSA Great Again – The Current State of the Department of Labor’s Overtime Exemption Rules,” to the Florida Society of Association Executives at its Executive Roundtable. The presentation addressed the recent injunction entered by a federal district court in Texas halting the implementation of the Department of Labor’s new overtime rules scheduled to go into effect December 1, 2016.

**Hetal Desai McGuire** was recently admitted to practice law in the state of Georgia.

**Jeffrey D. Slanker** wrote an article discussing the 11<sup>th</sup> Circuit Case Notes in *The Checkoff*, November 2016 edition.

### **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](http://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.