

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT

June 2017

US DOE Scales Back Title IX Investigations

On June 8 2017, an Internal Memorandum prepared by the United States Department of Education's Office for Civil Rights' Acting Assistant Secretary for Civil Rights was sent to OCR Field Offices nationwide. Importantly, the Internal Memorandum addresses the role of OCR in investigating Title IX complaints moving forward. The following are key excerpts and seem to reflect US DOE will be scaling back the scope of its investigations (emphasis added):

- “...*OCR will no longer follow the existing investigative rule of obtaining three (3) years of past complaint data/files in order to assess a recipient's compliance*, which rule had been stated in OCR's Approach to Title IX PSE Sexual Violence Complaints (January 2014) (for internal discussion), OCR's Approach to the Evaluation, Investigation and Resolution a/Title VI Discipline Complaints (February 12, 2014) (Draft for internal discussion), and other related internal policy documents. For example, if a discipline complaint requires analysis of whether a facially-neutral suspension policy was applied differently against a particular student based on a prohibited classification such as race, the investigative team (supervised by their Team leader and Regional Director) is empowered to determine what comparative data (CROC or otherwise) are necessary to, e.g., determine if other similarly-situated students of a different race were, in fact, treated differently from the student on whose behalf the complaint was filed.”
- “For the sake of clarity, these Instructions mean that OCR will only apply a ‘systemic’ or ‘class-action’ approach where the individual complaint allegations themselves raise systemic or class-wide issues or the investigative team determines a systemic approach is warranted through conversations with the complainant.”
- “I trust you will apply these instructions in line with the attitude and approach we are proud to foster here in OCR: that OCR exists to robustly enforce the civil rights laws under our jurisdiction, and we will do so in a neutral, impartial manner and as efficiently as possible. These instructions in particular are designed to empower our investigative staff to clear case backlogs and resolve complaints within a reasonable time-frame, thus providing effective resolution and justice to complainants and recipients.”

A copy of the Internal Memorandum is available at the following link: [Internal Memorandum](#).

Title IX Turns 45

Title IX turned 45 on June 23, 2017. Title IX prohibits high schools and colleges who receive federal funding from discriminating on the basis of gender in any program or activity. Since its inception, millions of girls and women have competed in high school and collegiate athletics across the country. Competing in athletics may have given women advantages in other areas of their lives. A recent survey found that among businesswomen in an executive position, 94% played sports growing up. While Title IX is still relatively young, it will be fascinating to see what allowing equal access to athletics does for our country as a whole in the coming decades.

Read more [here](#).

Cambridge Christian School Appeals Football Ruling

A Tampa Christian school is appealing a ruling that prohibited the school from offering a prayer over the stadium loudspeaker before a high-school football championship game. A federal judge upheld the the Florida High School Athletic Association (“FHSAA”)’s decision not to allow the school to pray over the loudspeaker prior to the game. The school appealed to the 11th Circuit Court of Appeals, arguing that FHSAA violated state and federal constitutional provisions and Florida’s religious freedom law by prohibiting the school’s right to offer the prayer.

Read more [here](#).

Ruling: Religious Schools Can Use Taxpayer Funds for Playground

On June 26, the United States Supreme Court ruled that taxpayer-funded grants for playgrounds which are available to nonprofit organizations under a state program could not be denied to a school run by a church. Chief Justice John Roberts wrote the opinion for the majority, finding that denying a benefit to a church school because of its religious character would penalize the free exercise of religion. The Court explicitly stated, however, that this ruling does not extend beyond funding for playground resurfacing.

Read more [here](#).

From the Lighter Side: Newlyweds Robbed of Bliss Sue for Emotional Distress

The Florida Third District Court of Appeal recently affirmed in part the jury verdict in a suit for breach of contract and intentional infliction of emotional distress. The suit was brought by two plaintiffs against the hotel with which they contracted to hold their wedding reception.

The newlyweds, Kemesia Boota Ward and Patrick James Ward, were “embarrassed,” and were caused to “cry uncontrollably,” and have “nightmares” after their wedding reception was moved from the ballroom in which they planned to celebrate to the hotel lobby. The hotel argued that the contract did not promise a specific location for the nuptials.

Unfortunately for the betrothed, the appellate court agreed with the jury finding that the conduct did not rise to the level of intentional infliction of emotional distress, and disagreed with the amount of damages awarded by the jury for the breach of contract claim.

On behalf of the firm, best of luck to the happy couple.

Read the opinion [here](#).

Firm News

Terry J. Harmon presented on education law topics multiple times in June to various crowds in various cities, including the following:

“Harassment and Bullying as Related to Social Media” - Florida Association of School Administrators Professional Development Day for school administrators in Putnam County, Florida (Palatka, FL) (June 7, 2017)

“Ahead of the Curve: Religious Expression and Instructional Materials – Operational and Policy Considerations for your District” - Florida school board members and superintendents at the Florida School Boards Association’s 2017 Annual Summer Conference in Tampa, Florida (June 19, 2017)

“Legal Issues Related to Bullying, Cyberbullying and Social Media” - Florida Association of School Administrators Professional Development Day for school administrators in Calhoun, Jackson, and Liberty Counties, Florida (Marianna, FL) (June 22, 2017)

The Firm is excited to announce that it has joined the Georgia Legal History Foundation, an organization devoted to preserving the legal history of states in the southeast.

Join Us for the Sniffen & Spellman Lunch and Learn Seminar Series

This year Sniffen & Spellman is proud to offer quarterly lunch and learn seminars for our clients and friends to discuss and answer questions on important labor and employment and business liability issues. The seminars will be held at the Firm’s office at 123 North Monroe Street in Tallahassee. Lunch will be provided. Space is limited.

If you would like to attend a seminar, please contact Hannah McKinney at hmckinney@sniffenlaw.com or at 850-205-1996.

Tentative dates (topics to be announced later) for the rest of the 2017 series are as follows:

September 28

December 7

We hope you can join us for lunch and a great discussion!

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.