

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT

July 2017

Ruling: School District Not Liable Under Title IX Where Perpetrator Was Only Employee With Knowledge

The Fifth Circuit Court of Appeals recently reversed a lower court's judgment awarding \$4.5 million dollars to the plaintiff, Adrian Salazar, in his Title IX suit against South San Antonio Independent School District, in which he alleged he has molested by a district employee for a series of years.

The Appellate Court's decision turned on the parties' stipulation that the perpetrator, the school vice principal, was the only district representative who had actual knowledge about the abuse at the time it occurred. Plaintiff argued that the district was liable for damages under Title IX because the vice principal had authority to institute corrective measures on behalf of the district and was deliberately indifferent to the abusive conduct.

Ultimately, the Fifth Circuit refused to extend liability for a private right of action under Title IX where the only employee with actual knowledge of the discrimination was the perpetrator himself.

Read the opinion [here](#).

OCR Changes Investigation Protocol

The Department of Education's Office for Civil Rights released an internal memorandum to its Regional Directors advising of a change to its investigation protocols. Specifically, the memorandum states that OCR's practice will no longer be to require three years of past complaint files from institutions under investigation. Instead, the investigative team will have authority to determine what information is necessary to review based on the individual complaint allegations.

Read more [here](#).

U.S. Department of Education to Host Title IX Listening Series

On July 12, Secretary of Education Betsy DeVos announced plans to hold several sessions hosting a diverse group of stakeholders at the Department of Education to discuss the impact of the Department's Title IX sexual assault guidance on students and institutions. The listening session are a part of the Department's efforts to engage in ongoing discussions with schools,

students, parents, advocacy groups, and other experts regarding protecting students and implementing Title IX.

Participants, topics, and other information can be found [here](#).

Ruling: Employee's Untimely Complaint Dismissed Where She Did Not Establish Causation Between Mental Illness and Delayed Filing

On July 18, the Eleventh Circuit Court of Appeals ruled in *Stamper v. Duval County School Board* that the plaintiff's mental health condition did not entitle her to equitable tolling of the statute of limitations to file a charge of discrimination with the Equal Employment Opportunity Commission.

The proceedings originated in 2011 when plaintiff, Tyquisha M. Stamper, filed a charge of race and disability discrimination against the School Board. The EEOC subsequently dismissed the charge and issued Ms. Stamper a right to sue. However, instead of instituting litigation within 90 days of receiving her right to sue, Ms. Stamper filed a request for reconsideration, which prompted the EEOC to revoke its previous dismissal. Ms. Stamper then filed an identical charge and received a second notice of right to sue from the Department of Justice. She then filed a lawsuit outside of the original 90 days statute of limitations, but within 90 days of the latter notice of right to sue.

The Eleventh Circuit agreed with the district court, holding that Ms. Stamper did not establish a causal connection between her catatonic schizophrenia and her failure to timely file a complaint, and dismissing Ms. Stamper's suit as untimely.

Read the opinion [here](#).

Secretary DeVos Hires Deputy Assistant Secretary for Higher Education Programs

Secretary of Education DeVos hired Adam Kissel as Deputy Assistance Secretary for Higher Education Programs, Office of Postsecondary Education. The position is responsible for "overall leadership for overseeing, administering, and coordinating discretionary and formula grants and contracts, and providing other services to foster equal access to and excellence in higher education."

Read more [here](#).

From the lighter side: Man Who Drove Dead Body to Lawyer's Office Not Indicted

After Bokeelia resident John Marshall shot and killed his neighbor, he drove the corpse to his attorney's office in the back of his Honda Ridgeline pickup truck. His lawyer, Robert Harris, apparently has a stronger stomach than yours truly, who would respectfully request that readers refrain from delivering any corpses to Sniffen & Spellman's front door, culpability aside.

Mr. Harris argued self-defense on behalf of his client, and the grand jury agreed, refusing to indict Mr. Marshall of any crime.

Read more [here](#).

Firm News

On June 29, 2017, Terry J. Harmon presented “Title IX Legal Issues in Postsecondary Institutions – The Current Landscape” at the Association of Florida Colleges’ 2nd Annual Campus Safety Symposium held at the College of Central Florida. Mr. Harmon also presented “Title IX: Sexual Violence Issues in Schools” at a national webinar hosted by the Vertical Alliance Group, Inc., on July 18, 2017.

On July 13, 2017, Hetal Desai gave a presentation to the Florida Society of Administrative Executives at the 2017 Annual Conference titled “Is that Even Legal?”

Congratulations to Robert Sniffen, Michael Spellman, Terry Harmon, and Jeff Slanker for being named as Super Lawyers in 2017.

Michael Spellman presented a talk on Citizen-led initiatives and charter amendments at the 36th annual Florida Municipal Attorneys' Association.

On July 17, 2017, Michael Spellman and Lisa Fountain gave presentations at the Florida Association of Self Insurance Annual Conference. In addition to presenting at the conference, Mr. Spellman serves on the FASI Board of Directors.

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