

SNIFFEN & SPELLMAN, P.A.

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Surge in Lawsuits Filed by Accused in Title IX Claims

In recent years sexual harassment and assault on campus has been a prominent topic in the national conversation. A trend which has garnered less attention is the increase in lawsuits by those who have been accused of sexual misconduct.

The accused have been asserting defamation claims against the individual who accused them as well as the university that disciplined them. The basic premise is that statements made by the accuser during the course of a campus sexual assault investigation are defamatory if they can be shown to be false. A claim of defamation may stem from oral or written statements. Unlike criminal law, there is no clear immunity doctrine to protect those involved in campus adjudications.

Affirmative defenses to claims of defamation include the statement being true or a statement of opinion; qualified or absolute privilege, meaning even if the statement was false the speaker had a good faith reason to believe the statement was true and had a personal or professional interest in communicating the statement; and common-interest qualified privilege which is only overcome when the statement is shown to be made with actual malice.

Read more [here](#).

Is Transgender Status Protected Under Title VII?

A federal jury in Oklahoma (six women and two men) awarded a transgender professor, more than \$1.1 million in her claim that her former employer, Southeastern Oklahoma State University, discriminated against her on the basis of sex.

The professor was hired in 2004 as a tenure-track assistant professor in the English Department. In 2007, she began transitioning from male to female, becoming the university's first openly transgender professor. The professor informed the university that she would be presenting as a woman for the 2007-2008 school year. Thereafter, the professor alleges she received a call from human resources informing her that she would not be fired as long as she followed rules including not using the women's restroom or wearing short skirts.

In 2009, the professor applied for tenure which was approved by the tenure committee but rejected by university administrators. The university later denied her an opportunity to reapply for tenure, and terminated her in 2011, for failure to attain tenure prior to the end of her seventh year at the university. This case is important because transgender status was deemed protected under Title VII, an area of law that is far from settled.

Read more [here](#).

One and Done: Under University of Mississippi Harassment Policy a Single Offensive Utterance Could Qualify as a Violation

The University of Mississippi's harassment policy aims to cure a hostile environment before one is created, a position more rare than many assume. From a Constitutional standpoint, almost all speech is protected until it becomes severe, pervasive, and repeated. Once that threshold is crossed the speech qualifies as harassment and administrators can intervene. At the University of Mississippi, an individual can violate the university policy with a single comment or action, that if repeated, could deny someone access to university resources or an education. The university's general counsel feels college leaders should not have to wait until the point when behavior legally qualifies as harassment to step in and assist a student.

Read more [here](#).

Hazing Death Results in Unprecedented Statewide Ban of Fraternity

A Pennsylvania judge has banned the Pi Delta Psi fraternity from the state for a decade as punishment for a hazing death in 2013. The chapter of the fraternity involved in the death was affiliated with City University of New York's Baruch College, and was only present in Pennsylvania, where the death occurred, for an event in the Poconos. The fraternity has two chapters in the state, and both are subject to the ban even though neither was involved in the hazing death. Also unusual, the national fraternity was successfully prosecuted and was ordered to pay more than \$112,000 in fines in addition to the statewide ban.

Read more [here](#).

Foul Mouthed Professor Protected by First Amendment?

A tenured professor of elementary education was terminated by Louisiana State University for cursing at students and discussing her own sex life, as well as her students' sex lives in the classroom. The professor sued the university for First Amendment and due process violations, and for having unconstitutional sexual harassment policies. A United States District Court Judge disagreed with the professor's position and dismissed all claims with prejudice. The Judge determined that profanity and sexual commentary in the classroom does not constitute First Amendment protected speech, are not matters of public concern, and are not part of an overall pedagogical strategy for teaching preschool and elementary education.

Read more [here](#).

Constitutional Revision Commission Eyes Higher Education

The 2017-2018 Constitutional Revision Commission, chaired by Carlos Beruff, held its organization meeting on March 20, 2017, and must complete its work by May 10, 2018, the deadline to submit its final report to the Secretary of State. Proposal 83, by Nicole Washington, a Miami based higher education consultant, seeks to codify the Florida college system into the state constitution and reaffirm that the State Board of Education shall provide its oversight.

Read more [here](#).

From the Lighter Side: North Carolina Man Runs on Dunkin'

A North Carolina man who previously made headlines when he was arrested for break-ins the day after winning a police sponsored doughnut-eating contest has made his way back into the criminal justice system. His alleged crime this go-around, stealing from a Dunkin' Donuts.

Read more [here](#).

Firm News

Robert J. Sniffen provided an update on legal issues impacting public schools at a meeting of the Florida School Boards Insurance Trust. He also presented "Top Employment Law Risks for 2018" at the Florida Chamber of Commerce Capitol Days event in Tallahassee.

Michael P. Spellman spoke about the Americans with Disabilities Act ("ADA") and mental health issues in the workplace at the FASI Winter Conference in Lake Mary, Florida.

Sniffen & Spellman, P.A. sponsored the 12th Annual Working Well CEO Breakfast at the Turnbull Center on January 30th. Working Well is an organization that connects workplaces with wellness with the mission of making Tallahassee a healthier city. **Michael Spellman** and **Lisa Barclay Fountain** attended as firm sponsors and **Kevin Kostelnik** serves as a Working Well board member.

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