



EDUCATION LAW ALERT

November 2014

Title IX Case Update: Northwestern Prevails in Action Brought by Student

In our February 2014 edition of the *Education Law Alert*, we reported that Northwestern University (“Northwestern”) was sued by a current student alleging Northwestern acted with deliberate indifference and retaliated against her in relation to its handling of her sexual assault complaint against a professor (Peter Ludlow). The student claimed that Northwestern violated Title IX by failing to take sufficient and meaningful corrective and remedial action.

On November 13, 2014, the United States District Court for the Northern District of Illinois, Eastern Division, entered an Order dismissing Plaintiff’s Title IX action. In the Order, the Court cited precedent that requires a plaintiff to demonstrate that an institution has actual knowledge of harassment and to have exhibited deliberate indifference in order to be liable for damages. In dismissing Plaintiff’s action, the Court reasoned, “[h]ere, the Plaintiff complained to Northwestern of sexual harassment on the part of Ludlow after it occurred. Northwestern immediately conducted an investigation into the allegations and issued a report finding them well taken. It took remedial action which consisted at least in part by instructing Ludlow not have any contact with Plaintiff.”

Interestingly, the Court rejected Plaintiff’s claim that Northwestern was indifferent for not firing Ludlow, stating that such a claim “flies in the face of Supreme Court precedent” because the Supreme Court has held that Title IX does not give a victim the right to make particular remedial demands.

A copy of the Court’s opinion is available at the following link: [Ha v. Northwestern University](#).

Source: [The Daily Northwestern](#).

Florida School Board’s Termination Hearing Process Upheld

In [Seiden v. School District of Indian River County, Florida](#) (Case No. 4D13-2250), the Fourth District Court of Appeal affirmed a final administrative order of the School Board of Indian River County (“School Board”) terminating Alan Seiden (“Seiden”) from his teaching position. Seiden was terminated for misconduct as a result of his response to the behavior of a special needs student. Seiden requested a hearing and the School Board elected to oversee the hearing itself as opposed to sending the matter to the Florida Division of Administrative Hearings (“DOAH”) for the appointment of an Administrative Law Judge. Seiden moved to disqualify the School Board arguing that because the School Board failed to report Seiden upon learning of the incident, the School Board would be focused on its/their own interest and would not act as a “fair adjudicator.” The School Board denied the motion and conducted the hearing.

At the hearing, the Superintendent, represented by independent counsel, presented evidence supporting the termination while another attorney served as the School Board’s counsel. During the course of the hearing, at least two School Board members stated that they were parents of special needs children. One member stated at the conclusion of the hearing, “I thought this should have...gone to a DOAH Hearing.” The member further said, “I would have loved to recuse myself from this, but I can’t.”

Seiden argued on appeal that his due process rights were violated by the manner in which the hearing was conducted. The Court held that the “law does not hold an administrative proceeding conducted by elected officials to the same standards as one held in a court of law.” The Court went on to state that a due process violation is not “triggered by the fact that the School Board employed Seiden and the Superintendent investigated and evaluated his conduct.” Regarding the recusal issue, pursuant to Section 120.665, [Florida Statutes](#), an individual may be disqualified “from serving in an agency proceeding for bias, prejudice, or interest...” if the suggestion is filed within a reasonable time prior to the agency proceeding. The Court stated, “[s]imilar to any agency’s familiarity with matters within its purview, the Board members’ personal experience with special needs children did not rise to the level that requires disqualification.”

Lastly, Seiden argued that the School Board was “demonstrably unqualified” to handle this hearing. The Court found, “although not a model hearing, the hearing complied with due process in that it allowed Seiden a fair chance at challenging the reasons for his termination.”

A copy of the Court’s opinion is available at the following link: [Seiden](#).

Final Clery Act Rule Published

On October 17, 2014, the U.S. Department of Education (“US DOE”) announced the publication of a final rule implementing changes to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) in response to the passage of the Violence Against Women Reauthorization Act of 2013 (“VAWA”).

US DOE’s press release notes that the final rule “requires an institution to record incidents of stalking based on the location where either the perpetrator engaged in the stalking or the victim first became aware of the stalking.” Additional provisions of the new rule are as follows (quoted from press release):

- Add gender identity and national origin as two new categories of bias that serve as the basis for a determination of a hate crime;
- Describe each type of disciplinary proceeding used by the institution in cases of alleged dating violence, domestic violence, sexual assault and stalking, including the steps, anticipated timelines, and decision-making process for each, and how the institution determines which type of disciplinary proceeding to use;
- Include in their annual security report a statement of policy regarding the institution’s programs to prevent dating violence, domestic violence, sexual assault, and stalking as well as the procedures that the institutions will follow when one of these crimes is reported; and
- Provide that an institution’s disciplinary proceeding will afford the accuser and the accused the same opportunities to have others present during the institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice.

A copy of US DOE’s press release and the final rule are available at the following links: [Press Release](#); [Final Rule](#).

OCR Issues Dear Colleague Letter Regarding Bullying of Students with Disabilities

On October 21, 2014, US DOE’s Office for Civil Rights (“OCR”) issued guidance regarding the bullying of students with disabilities. The Dear Colleague letter addresses the responsibilities of schools under Section 504 and the ADA and “elaborates on the elements of a disability-based harassment violation and a FAPE violation, discusses how OCR generally analyzes complaints involving bullying of students with disabilities on each of these bases, and then concludes with a series of hypothetical examples that illustrate varying circumstances when conduct may constitute both a disability-based harassment violation and FAPE violation, a FAPE violation, or neither.” Schools must remain cognizant that failing to address bullying could result in the denial of FAPE to students with disabilities.

A copy of OCR’s press release and the guidance document are available at the following links: [Press Release](#); [Dear Colleague Letter](#).

OCR Issues Dear Colleague Letter Addressing Communication with Disabled Students

On November 12, 2014, OCR issued a Dear Colleague letter identifying the responsibility of schools to communicate with students with hearing, vision, or speech disabilities as effectively as non-disabled students. OCR also issued a FAQ document with the Dear Colleague letter. Both documents address the interplay between Individuals with Disabilities Education Act (“IDEA”) and Title II and the differing requirements of each law.

A copy of OCR’s Dear Colleague letter is available at the following link: [Dear Colleague Letter](#).

OCR Enters Agreement with School District (NJ) Involving Allegations of Racial Discrimination in Advanced and Higher-Level Learning Opportunities

OCR announced recently that it entered into an agreement with the School District of South Orange & Maplewood, New Jersey (“School District”), in relation to a compliance review addressing “whether black students are provided an equal opportunity to access and participate in advanced and higher-level learning opportunities.” OCR found that in 2012-2013, only 18.7% of black students were enrolled in Advanced Placement courses despite representing 51.5% of all enrolled students. As part of the resolution, the School District agreed to take several actions, including the following (quoted from press release):

- Work with an expert consultant; obtain feedback from students, parents and staff; and conduct a comprehensive self-assessment of its current programs and courses to identify any potential barriers;
 - Consider expanding criteria to determine eligibility and selection for enrollment;
 - Expand student, parent, and community outreach about the available courses and programs;
 - Make improvements to the academic counseling services at the middle and high school levels; and
 - Provide training for relevant district and school site administrators and personnel.
- A copy of OCR’s press release which includes links to the resolution letter and agreement is available at the following link: [Press Release](#).

Ex-UNC Football Player Sues School Over Academic Scandal

Michael McAdoo filed a class-action lawsuit against the University of North Carolina at Chapel Hill (“UNC”) in federal court alleging UNC failed to provide a legitimate education while still reaping benefits from student-athletes’ performances on the playing field. McAdoo is a former UNC football player and is the first athlete to file such a claim. He was expelled from UNC in 2011 amidst the well-known academic scandal that has caused quite the stir across the Country.

Today, it is widely known as the “paper class” scandal. More than 3,100 students, nearly half of whom were athletes, enrolled in classes where they did not have to attend and only had to complete a single paper to earn a passing grade. McAdoo’s lawsuit claims UNC was more interested in keeping athletes eligible to participate in athletics than actually educating them.

The scandal led to an eight-month investigation conducted by Ken Wainstein. Although many UNC staff members declined to cooperate, the investigation revealed, among other things, that some student-athletes were underprepared for the rigor of UNC’s academics. McAdoo says he was forced to pick from only three majors - Exercise & Sport Science, Communications, and African American Studies. “I lost an education, I lost trust in the school - someone I thought had my best interest. I definitely lost out on two seasons of football which would have put me in a better situation than I am [in] now,” McAdoo added.

One concern for UNC officials is that the lawsuit could expose more than any previous investigation because McAdoo’s lawyers will potentially force people to cooperate by subpoenaing them for deposition, something Wainstein did not have the power to do. The lawsuit requests the Court to enjoin UNC from limiting the majors student-athletes can choose and seeks compensation for McAdoo and others who claim they were not afforded the education that was promised by UNC.

Source: [CNN](#)

Two Prestigious Schools Sued for Admissions Procedures

An advocacy group called Students for Fair Admissions, Inc. (“SFA”) recently filed separate lawsuits against Harvard University (“Harvard”) and UNC alleging the schools implement improper admissions policies. The advocacy group represents college applicants who have been rejected by Harvard and UNC, and it claims the two schools have limited the admissions of Asian Americans, violating their constitutional rights. SFA argues the universities are using racial preferences in a way that shields other ethnicities from competing against “high-achieving Asian Americans.”

Both schools maintain their admissions procedures are compliant with all laws and regulations. Harvard’s general counsel, Robert Iuliano, added that Harvard’s admissions policies “are essential to the pedagogical objectives that underlie Harvard’s educational mission.” SFA seeks to have the schools enjoined from using race as a factor in the admissions process and suggests diversity can be ensured by using other criteria.

Source: [Bloomberg News](#)

From the Lighter Side: Battle Over Popular Condiment

Leftover turkey sandwiches with mayonnaise are prevalent after a Thanksgiving feast. Before you take a bite of that wonderful sandwich, make sure to ask yourself if you are eating “mayo.” Hellmann’s, the popular maker of “Real Mayonnaise,” recently sued a California company (“Hampton Creek”) for false advertising alleging that it is improperly using the term “Mayo” in its product called “Just Mayo.” Hellmann’s alleges that federal regulations and dictionary definitions define mayonnaise as a spread containing egg; however, “Just Mayo” is an egg-free product. Judge for yourself: <http://www.merriam-webster.com/dictionary/mayonnaise>.

Source: [Fox 11](#).