

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT February 2015

Federal Government Intervenes in Transgender Student Lawsuit

On February 20, 2015, the federal government filed a “Statement of Interest of the United States” in a federal lawsuit in Michigan involving allegations that school districts in Michigan denied a 14-year-old transgender student equal treatment and subjected him to harassment in violation of Title IX of the Education Amendments of 1972 (“Title IX”), Title IV of the Civil Rights Act of 1964 (“Title IV”), and the Equal Protection Clause of the Fourteenth Amendment. The Defendants moved to dismiss the lawsuit on grounds that the Plaintiff could only establish a sex discrimination claim through evidence that the school districts engaged in sex stereotyping.

The federal government filed the “Statement of Interest of the United States” to assist the Court in resolving Defendants’ motion to dismiss. The federal government claims that the document will assist the Court in understanding that “a person may establish sex discrimination through discriminatory conduct based on gender identity or transgender status, regardless of whether there is evidence of sex stereotyping.”

A copy of the “Statement of Interest of the United States” is available at the following link: [Education Week](#).

US DOE Issues Guidance to Protect Student Privacy Online

This month, the United States Department of Education (“US DOE”) issued guidance on how school districts and schools can help protect student privacy online and in applications. US DOE issued model terms of service guidance to “identify which online educational services and apps have strong privacy and data security policies to protect our students.” US DOE also issued a training video to assist school districts and schools.

More information pertaining to US DOE’s guidance, including links to the model terms of service guidance and training video, is available at the following link: [US DOE](#).

Proposed Legislation Creates the “Student Online Personal Information Protection Act”

Student online personal information is the subject of proposed legislation in the upcoming Florida legislative session and, as noted in the article above, a topic being considered by the US DOE. House Bill 59 creates the “Student Online Personal Information Protection Act” and prohibits certain online “operators” (websites, cloud services, mobile apps, online apps, etc.) from “displaying targeted advertising, using certain information to amass student profiles for certain purposes, or selling or disclosing covered information.” Under HB 59, the definition of “operator” only includes those individuals or companies who know “that the website, service, or

application is used primarily for K-12 school purposes and is designed and marketed for K-12 school purposes.” The legislation also contains various other provisions pertaining to student online personal information, including mandated security procedures for operators to protect and delete certain student personal information.

A copy of the bill is available at the following link: [HB 59](#).

9/11 May be a Mandatory Topic of Public School Instruction in Florida

The tragic events of 9/11 are something those of us alive in 2001 will never forget. House Bill 85 (Hill – R) seeks to ensure students in Florida’s K-12 schools understand the history and impact of 9/11 by mandating that the events surrounding 9/11 and the impact of those events on the nation be a mandatory subject of instruction (F.S. 1003.42). An identical bill has also been filed in the Florida Senate ([SB 358](#)).

A copy of the bill is available at the following link: [HB 85](#).

Yakima (WA) School District Settles with Office for Civil Rights

The United States Department of Education’s Office for Civil Rights (“OCR”) recently resolved a compliance review involving the Yakima School District (WA). The school district’s particularly high number of sexual harassment complaints initially drew the attention of OCR. OCR’s investigation uncovered violations of federal civil rights laws involving bullying and harassment amongst the students in the school district. In many such instances, victims of harassment could not even be identified because of the school district’s poor recordkeeping.

The school district vowed to ensure the effects of harassment on its students would be remedied in the future. OCR’s Catherine Lhamon (Assistant Secretary) stated, “I appreciate Yakima School District’s commitment to work with OCR to satisfy civil rights obligations to take steps to reduce bullying and harassment in schools within the district.” Among other commitments, the school district agreed to conduct annual school climate checks related to harassment incidents, train students on recognizing and reporting harassment, and create a task force to suggest strategies for dealing with harassment in schools.

More information related to the resolution is available at the following link: [OCR & Yakima School District Resolution](#).

Third Circuit Rules in Favor of School District in ADEA/Title VII Case

Dorothy Daniels (“Daniels”) filed suit against her former employer, the School District of Philadelphia (“District”), and alleged it violated the Age Discrimination in Employment Act (“ADEA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), and the Pennsylvania Human Relations Act. Daniels claimed the District retaliated against her for voicing her concerns about what she perceived was the District’s discriminatory conduct. A Pennsylvania federal court granted summary judgment in favor of the District and Daniels appealed. The retaliation claim was the only issue addressed on appeal.

Daniels contended she engaged in the following protected activities: (1) she complained to a principal about the principal making a grandparent comment in reference to Daniels' age; (2) she complained to a principal about excessive monitoring in her class; (3) she complained that she was subjected to a hostile work environment because of her age; (4) she filed a complaint with the Pennsylvania Human Relations Commission ("PHRC") claiming age and race discrimination; and (5) she filed a second complaint with PHRC claiming teachers retaliated against her for engaging in protected activities. The Court on appeal ruled Daniels demonstrated that the last three activities constituted protected conduct.

After determining the last three activities constituted protected activities, the Court moved to the second prong of its retaliation analysis to resolve when Daniels suffered adverse employment actions. Daniels alleged the District engaged in several adverse actions, including the denial of her wage continuation benefits and the termination of her employment. The Court held the District did engage in several adverse actions.

With respect to the final prong of the Court's retaliation analysis, the Court held that none of Daniels' protected activities were causally connected to the District's adverse actions. As a result, the District prevailed on appeal.

A copy of the Court's opinion is available at the following link: [Daniels v. School District of Philadelphia, et al \(Case No. 14-1503\)](#).

Proposed Legislation Creates Additional Charter School Requirement

Charter schools are a popular topic every legislative session. It does not look like that trend will change this year. A bill (Senate Bill 254) has been introduced that requires a charter school to "clearly demonstrate that it meets a specific instructional need or a need for additional educational facilities as defined in s.1013.01, which the local school district does not or is unable to provide to students" in order to obtain approval to operate the school. A related bill has yet to be filed in the House of Representatives.

A copy of the bill is available at the following link: [SB 254](#).

Department of Education Raises Awareness on Child Trafficking

US DOE is raising awareness of the seriousness of child trafficking by releasing *Human Trafficking in America's Schools*. The free guide includes information on how to identify trafficking, what to do if you suspect trafficking, and includes sample policies that schools may follow. The release of the guide coincides with the announcement of the US DOE's partnership with the Department of Health & Human Services and others focused on preventing human trafficking.

Child trafficking is commonly referred to as modern day slavery and utilizes children for despicable acts. US DOE is focusing on the school community because of the many different people who are around children on a daily basis. US DOE hopes to dramatically decrease the

number of children trafficked each year by making people aware of the warning signs and how to respond to suspected trafficking situations.

More information is available at the following link: [Put an End to Human Trafficking](#).

From the Lighter Side: Beer Bottle in Mouth + Driving a School Bus + Selfie = Bad Decision

Selfies are a popular way to document exciting moments in life. For one school bus driver in Ohio, the idea of snapping a selfie while pretending to drink a beer behind the wheel of a school bus was too much to keep private. Unfortunately, soon after posting the selfie to Facebook, the school bus driver was fired. While an internal investigation revealed that the bus driver was off-duty and the beer bottle was unopened, it did not help with her employment.

Source: [Huffington Post](#).

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