

# SNIFFEN & SPELLMAN, P.A.

---

## EDUCATION LAW ALERT March 2016

### **Illegal Student Debt Relief Scheme Shut Down**

The Consumer Financial Protection Bureau (“CFPB”) requested a federal district court to enter a final judgment and order that would shut down a student debt relief scheme that charged borrowers millions of dollars in illegal upfront fees for federal student loan services. The company, Student Loan Processing.US, headquartered in Laguna Niguel, California charged consumers illegal enrollment fees before providing any services, deceived customers about the costs of their services and falsely represented an affiliation with the Department of Education. The result was that students who were looking for loan repayment help were defrauded out of millions.

The CFPB is authorized to take action against certain institutions engaged in deceptive acts or practices, or that otherwise violate federal consumer financial laws. If the proposed consent judgment is indeed entered by the court, Student Loan Processing.US and its owner must shut down illegal operations, cancel all contracts with consumers and stop charging them, pay consumer refunds, stop participating in the debt relief and student loan industries, ensure that student loan borrowers do not miss important repayment benefits and pay a civil remedy. U.S. Department of Education Secretary John B. King, Jr. praised the CFPB’s actions to shut down the scheme and reminded borrowers: “Don’t be fooled – You never have to pay for help with your student loans.”

Source: [U.S. Department of Education](#)

### **Senate Unanimously Passes Balanced Budget, Includes Unprecedented Student Funding**

On March 11, 2016, the Florida Senate passed House Bill 5001 – the 2016-17 General Appropriations Act – which raised K-12 per student funding to the highest level in state history. The bill provides broad-based tax relief for families and businesses in Florida and preserves three billion dollars in state reserves, highlighting the importance of making critical investments in Florida’s health care system and the environment.

Senator Tom Lee (R-Brandon) serves as Chair of the Senate Committee on Appropriations and had this to say about the passage of HB 5001: “In these times of economic uncertainty, we need to ensure our state has the resources to remain resilient.” Senator Lee went on to explain the strategic investments made by the Senate during this session will ensure that Florida is prepared to do just that.

More information – along with statements of several other senators – is available at [The Florida Senate](#).

**OSHA Administrative Law Judge Rules Connecticut Contractor  
Misclassified Employees As Independent Contractors**

The Department of Labor's Occupational Safety and Health Administration ("OSHA") recently rendered a Decision and Order that serves as a reminder to businesses to be wary of how they classify employees. On February 1, 2016, OSHA cited Royal Construction Company ("Royal Construction"), a roofing contractor in Canton, Connecticut, for seven violations of workplace safety standards at their work site, amounting to \$20,240 in proposed fines. Royal Construction, however, filed a notice of contest with the OSHA Commission. The subsequent litigation revealed that despite Royal Construction's arguments to the contrary, the workers at the job site were employees, not independent contractors. As such, the employees fell under the auspices of OSHA's safeguards.

The Administrative Law Judge, Keith E. Bell, rendered the opinion which reminds employers that they "cannot evade their responsibility by claiming that workers on a job site are independent contractors when the facts show otherwise," explained Michael Felsen, the regional solicitor of labor for the New England area.

For more information, visit: [U.S. Department of Labor](http://www.dhs.gov)

**Title IX Settlement between US DOE and New York Community College**

The Office of Civil Rights for the U.S. Department of Education ("OCR") resolved issues relating to equal access to athletic opportunities with Erie Community College of Buffalo, New York. The OCR investigated a complaint alleging the college discriminated on the basis of sex in its intercollegiate athletics program, by failing to provide equal opportunities to members of both sexes. The college had cut five women's sports teams and added several men's sports teams. Prior to issuing its findings, the college requested to enter into a resolution agreement in which it agreed to implement and communicate a nondiscriminatory policy and procedure for requesting additional sports teams and elevating existing intramural teams-especially female sports teams and conduct periodic assessments of athletic interests and abilities of its students.

A copy of the resolution letter can be found [here](#).

**Potential Employer Required to Pay \$95,000 to Applicant Rejected Due to Prior Back  
Injury**

On March 15, 2016, the U.S. Equal Employment Opportunity Commission ("EEOC") announced a Washington federal court ordered a Texas-based company, BNSF Railway Co., to pay \$95,000 to a qualified applicant who was denied hire due to an old back injury. In addition to the monetary relief, the court awarded permanent injunctive relief.

The EEOC previously obtained an order from the court finding that the company's failure to proceed with the hiring process after the applicant, Russell Holt, disclosed his prior back injury was a violation of the Americans with Disabilities Act ("ADA") "on its face."

The EEOC investigated the matter and attempted to reach a pre-litigation resolution through its conciliation process. When those efforts failed, the Commission filed suit in the U.S. District Court for the Western District of Washington. The court's judgment includes \$62,500 in compensatory damages for Holt's emotional distress and approximately \$33,000 in back pay and interest. The court also imposed a permanent injunction requiring the company to bear the cost of medical information sought from applicants to complete the medical examination process because the company "failed to demonstrate a likelihood that its discriminatory conduct will not continue in the future."

For more information, visit [U.S. Equal Employment Opportunity Commission](http://www.eeoc.gov).

### **EEOC Proposes Regulations Describing Federal Government's Obligation to Engage in Affirmative Action for People with Disabilities**

The U.S. Equal Employment Opportunity Commission ("EEOC") recently published a Notice of Proposed Rulemaking ("NPRM"), which informs federal agencies of the specific actions which they must take to comply with their obligation to engage in affirmative action in employment of individuals with disabilities.

The NPRM operates to clarify what affirmative action plans must be included in order to comply with the requirements of Section 501 of the Rehabilitation Act, which requires federal agencies to create such plans and submit them to the EEOC for approval.

The NPRM would require federal agencies to adopt the goal of achieving 12% representation by individuals with disabilities and 2% representation by individuals with targeted or severe disabilities. The agencies would also be required to provide personal assistance services to employees who need assistance with such activities as eating or using the restroom. Members of the public have until April 25, 2016 to submit comments on the NPRM.

For more information, visit: [U.S. Equal Employment Opportunity Commission](http://www.eeoc.gov).

### **Justice Department Announces New Interagency Initiative to Combat Religious Discrimination**

The U.S. Justice Department is working to combat religious discrimination in new and innovative ways. The Department recently announced the launch of a new interagency community engagement initiative, "Combating Religious Discrimination Today," which is designed to promote religious freedom, challenge religious discrimination, and enhance enforcement of religion-based hate crimes.

The initiative will include nationwide community roundtables hosted by the Justice Department's Civil Rights Division and other agencies, including the Departments of Education, Homeland Security, and Labor, along with the Equal Employment Opportunity Commission, the FBI, the Office of Justice Programs, and the Executive Office for U.S. Attorneys. The roundtables, which kicked off in Newark, New Jersey on March 6, will focus on protecting people and places of worship from religion-based hate crimes, combating bullying and other

forms of religious discrimination, and addressing unlawful barriers that interfere with the construction of places of worship. Other roundtables are set to take place in Dallas, Birmingham, Detroit, and Palo Alto.

For more information, visit: [U.S. Department of Justice](#)

### **From the Lighter Side: Judge Rules ‘Postal Court’ is a Sham**

In a bizarre story, a federal judge in Connecticut recently struck down a judgment entered in a faux court system. U.S. District Judge Jeffrey Meyer did not accept the fake court’s \$11.5 million judgment against a mortgage servicing company for which it filed for registration in Connecticut. Judge Meyer said the so-called postal court is a “sham and no more than the product of fertile imagination.” Judge Meyer’s suspicions were initially raised when he read an unusual attachment to the postal court’s judgment attempting to explain its validity. A series of frivolous filings by the court’s creator, David Wynn Miller, were uncovered by a simple Westlaw search which heightened Judge Meyer’s concerns even more. Ultimately, Judge Meyer ruled Miller’s filings do not meet federal statutory requirements.

The United States Postal Service does have a court system of administrative laws judges called the Judicial Officer Department of the U.S. Postal Service but it hears civil mail-fraud and other similar cases. A copy of the court’s order can be found [here](#).

Source: [ABA Journal](#)

### **Firm News**

**Robert J. Sniffen** has been elected President of the Academy of Florida Management Attorneys, a statewide organization consisting of employment defense lawyers who have practiced a minimum of 15 years. Mr. Sniffen will serve through January 2017.

**Robert J. Sniffen** authored “Why Can’t My Own Lawyer Defend Me?” for the *Association Source* magazine. The article focused on steps a business or governmental entity can take to ensure they are able to use their own outside counsel in the defense of insurance related claims.

**Hetal H. Desai** participated in a career panel discussion on March 30, 2016, for Florida State University’s College of Social Sciences and Public Policy.

### **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](http://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.