

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT May 2016

U.S. Departments of Education and Justice Release Guidance Explaining Schools' Obligations Toward Transgender Students in Light of Federal Laws

On May 13, 2016, the U.S. Departments of Education (“DOE”) and Justice (“DOJ”) jointly released a statement of guidance and best practices (“Guidance”) explaining how federal laws which prohibit discrimination based on sex affect schools’ obligations with regards to transgender students. Educators, parents, and students have increasingly requested the Departments provide guidance on the issue which is becoming a source of contentious litigation and concern nationwide.

The Guidance provides a summary of schools’ Title IX obligations and explains how the DOE and DOJ will evaluate compliance. Title IX of the Education Amendments of 1973 operates to prohibit schools receiving federal money from discriminating against a student based on sex. The Guidance makes clear that a student’s gender identity shall be treated as the student’s sex for Title IX purposes. A school is on notice of a student’s gender identity when students, or their parents, notify the school that the student is transgender. No medical diagnoses, medical treatments, or identifying documents are necessary to trigger a school’s Title IX obligations.

The Guidance includes a separate document with examples of policies implemented by school districts, state education agencies, and high school athletics associations across the country which serve to ensure that transgender students enjoy supportive and nondiscriminatory school environments.

The Guidance highlights the appropriate measures for certain sensitive areas with regards to Title IX compliance, including such topics as the following:

- Creating a safe and nondiscriminatory environment free of harassment;
- Treating students consistently with regards to their gender identity in terms of identification documents;
- Allowing participation and access to sex-segregated activities and facilities; and
- Protecting students’ privacy and education records under Title IX and the Family Educational Rights and Privacy Act.

More information is available at: [Press Release](#).

The statement of joint guidance is available in full at: [Guidance Document](#).

States Take on Feds Over Transgender Student Issues

Eleven states (Texas, Alabama, Wisconsin, West Virginia, Tennessee, Arizona, Maine, Oklahoma, Louisiana, Utah and Georgia) filed suit this month in a Texas federal court seeking to

challenge the joint guidance issued by the U.S. DOE and DOJ pertaining to transgender students. The lawsuit alleges, among other things, as follows:

Defendants have conspired to turn workplaces and educational settings across the country into laboratories for a massive social experiment, flouting the democratic process, and running roughshod over commonsense policies protecting children and basic privacy rights. Defendants' rewriting of Title VII and Title IX is wholly incompatible with Congressional text. Absent action in Congress, the States, or local communities, Defendants cannot foist these radical changes on the nation.

A copy of the lawsuit is available at the following link: [State of Texas](#).

Record Number of Federal Complaints Processed by US DOE

The United States Department of Education's Office for Civil Rights ("OCR") announced this month that it processed 10,392 complaints during fiscal year 2015 – a record number. US DOE also disclosed that it opened more than 3,000 investigations. According to the press release, in the last decade, the number of Complaints received by OCR has doubled. It is clear that US DOE has ramped up its enforcement efforts with no signs of slowing down.

The press release is available at the following link: [US DOE](#).

U.S. Department of Education Urges Colleges and Universities for Alternatives to Inquiring About Criminal Histories During Admissions

In an effort to level the playing field for an estimated 70 million citizens with criminal records interested in pursuing higher education, the US DOE made a recommendation in a new resource guide entitled Beyond the Box: Increasing Access to Higher Education for Justice-Involved Individuals. US DOE expressed concern that requesting criminal justice information may deter otherwise well-qualified applicants from enrolling in colleges and universities. The resource guide suggests numerous alternatives to inquiring about an applicant's criminal history including delaying the request for criminal justice involvement until after admission, as well as giving all prospective students the opportunity to explain criminal justice involvement and preparedness for participating in higher education. The U.S. Secretary of Education said, "we believe in second chances and we believe in fairness."

Read more at: [Press Release](#).

School District Not Required Under IDEA to Provide One-on-One Individual Trained in CPR and Heimlich Maneuver

In Se.H. v. Board of Education of Anne Arundel County Public Schools (Case No. 15-1486), Plaintiff (first grader) was a disabled student under the Individuals with Disabilities Education Act ("IDEA") suffering from a number of medical issues, including the following:

cerebral palsy; severe food allergies to wheat/gluten, barley, peanuts, and buckwheat; allergies to dust, pollen, mold, and smoke; asthma, including Baker's Asthma (an allergic disease caused mainly by inhalation of flour); oral dysphasia (a swallowing disorder) and feeding difficulties; dysarthria (a weakening of speech-producing muscles); seizure disorder; postural kyphosis (an abnormal curve of the spine); and vision problems.

At issue was whether the school district was required under the IDEA to provide an individual trained in CPR and the Heimlich maneuver to be "by Se.H.'s side at all times throughout the day." Ultimately, the Fourth Circuit Court of Appeals affirmed summary judgment in favor of the school district.

A copy of the opinion is available at the following link: [Se.H.](#)

U.S. Education Department Releases List of Title IX Exemptions

Prompted by numerous requests about which colleges and universities have been given exemptions to Title IX of the Education Amendments of 1972, the US DOE is now making public a list of all such institutions. These exemptions allow colleges that believe their religious convictions would otherwise be violated to circumvent parts of Title IX. The exemptions generally relate to the US DOE's interpretation of certain definitions in Title IX, such as discrimination based on sexual orientation or gender identity.

Source: [Inside Higher Ed.](#)

The exempt institutions can be found here: [Exemptions List.](#)

U.S. Department of Education Launches Grant Program for Creating Public Charter Schools

On May 10, 2016, the US DOE announced a competition to award \$65 million in grants to up to 20 Charter Management Organizations nationwide for the purpose of creating and expanding charter schools for students from underserved communities. The program adds to the over \$3 billion already expended by the US DOE to schools providing equitable educational opportunities.

Read more at: [Press Release.](#)

Mississippi School Accused of Handcuffing Students for Non-Criminal Offenses

Former student of Capital City Alternative School, Drodriquez Williams, has filed suit against Jackson Public School District alleging that school officials routinely handcuffed students to fixed objects for extended periods of time for non-criminal infractions, including dress code violations and verbal insubordination. Williams complaint states that he was subjected to "unreasonable and excessive restraints" and that students were "frequently handcuffed to railings located in or near the gym" for hours at a time.

In 2012, the US DOE released a report that physical restraint or seclusion should not be used in schools except in situations where the child's behavior poses imminent danger of serious physical harm to self or others. Williams' complaint alleges he suffered violations of his constitutional and civil rights.

Source: [Courthouse News Service](#).

From the Lighter Side: Defense Attorney Escapes Contempt for Cursing Under His Breath at Trial

A prominent Cleveland defense attorney came under fire after muttering cursing remarks under his breath while a prosecutor was arguing at a sentencing hearing and again in the elevator outside the courtroom. The attorney explained that such curse words are "commonplace" amongst defense and prosecuting attorneys alike and that the whole proceeding was a "monumental waste of federal tax dollars."

The attorney's exact remarks are disputed but contempt proceedings were prompted after a deputy who transports criminals from federal facilities to federal courts was "traumatized" after hearing the remarks. According to multiple witnesses, the attorney dropped the "f-bomb" as well as other "profane language." However, since neither the U.S. District Judge John Adams nor the court reporter heard the remarks, they are not a part of the official record. Judge Adams explained in his opinion that civil contempt was not the appropriate remedy since he was unaware of the remarks until after the proceedings and, while criminal contempt was an option, Judge Adams decided against it because the offending attorney apologized to opposing counsel and the court, and the remarks had minimal impact on the proceedings. Judge Adams did, however, refer the matter to Ohio attorney disciplinary authorities to determine whether further sanctions were appropriate.

Source: [ABA Journal](#).

Firm News

Effective June 1, 2016, Terry J. Harmon will be recognized by The Florida Bar as a **Board Certified Specialist in Education Law**. Board Certified lawyers are evaluated by The Florida Bar for experience and expertise in a particular area of law and professionalism and ethics in the practice of law. Certification is the highest level of evaluation by The Florida Bar of the competency and experience of attorneys in the areas of law approved for certification.

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