

# SNIFFEN & SPELLMAN, P.A.

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## EDUCATION LAW ALERT September 2016

### **Update on G.G. v. Gloucester County School Board (Transgender Bathroom Case)**

As many professionals in the education field are aware, the U.S. Supreme Court is still deciding whether to hear Gloucester County School Board v. G.G., a case involving a transgender student desiring to use the bathroom of his identified gender. In the last two months, the School Board has filed its Petition for Writ of Certiorari, the American Civil Liberties Union (“ACLU”) filed its opposition to the School Board’s Petition for Writ of Certiorari, and the School Board filed its Reply to the ACLU’s opposition. Several amicus briefs have also been filed by various third parties.

Copies of the recent filings are available [here](#).

### **U.S. DOE Releases More Guidance on Sexual Harassment and Misconduct (Title IX)**

This month, the U.S. Department of Education (“US DOE”) released a resource packed titled, “Safe Place to Learn.” The package is intended to provide schools with support materials to prevent and eliminate peer-to-peer sexual harassment and violence under Title IX. The materials include, among other things, the following:

- guidance for administrators;
- e-learning modules for all school staff;
- a coordinated response team planning guide and training module;
- a trauma sensitivity training module; and
- and action steps, discussion guides, bystander supports, and other resources.

Title IX Coordinators and other school staff responsible for handling complaints related to sexual harassment and violence should review the materials. The materials are available [here](#).

### **NLRB: Charter Schools are Private for Federal Labor Law Purposes**

The National Labor Relations Board (“NLRB”) recently ruled in two separate cases that charter schools are not public schools, but instead private corporations, for purposes of federal labor law.

The debate centers around the characteristics of charter schools. Specifically, charter schools are publically funded, tuition-free, open-enrollment institutions. However, union leaders note that charter schools are run by unelected boards that are not accountable to voters, in contrast to public schools.

In the recent decisions, the NLRB ruled that Hyde Leadership Charter School in Brooklyn and Virtual Charter School are private corporations that receive taxpayer dollars, not unlike other government contractors. As a result, the schools' employees must organize under the National Labor Relations Act, which applies to private sector employees, instead of state laws governing public sector employees.

Read more [here](#).

### **Schools are Eliminating Felony Conviction Box on College Applications**

State University of New York (SUNY) will no longer ask applicants about their felony convictions before admissions consideration. A study found that nearly two-thirds of the estimated 3,000 applicants with felony convictions never complete the admission process. This is due, in part, to the additional requirements or paperwork that applicants with felony convictions are required to fill out. SUNY joins 61 other universities who have eliminated their felony disclosure requirement.

New York Governor, Mario Cuomo, applauded SUNY's decision, stating "we must help individuals who have served their time to move past their mistakes."

Read more [here](#).

### **Changing Demographics in the University System**

According to a recent study done by U.S. News, both women and minorities are becoming better represented within the higher education system. In 1988, U.S. News analyzed gender-based data of University students and found that men made up 51.3% of National Universities. In 2016, women accounted for 54.7% of students at National Universities.

In 1986, 78.7% of students attending National Universities were white. In 2015, white students accounted for 55% of the students. With Black students accounting for 11.4%, Asian students 6.1%, Hispanic students 9.5%, American Indian students 0.5%, International students 5.8%, mixed race students 3.6%, Pacific Islander students 0.2%, and unknown accounting for 3.4% of the remaining student population. U.S. News credits this demographic shift to the increase in affordable and accessible higher education.

Read more [here](#).

### **U.S. DOE and DOJ Issue Guidance Regarding School Resource Officers**

The U.S. Departments of Education ("US DOE") and Justice ("US DOJ") jointly released what is characterized as "new tools to improve school climates, ensure safety, and support student achievement in our nation's schools." More specifically, US DOE and US DOJ have issued guidance on how school resource officers should be incorporated into schools. More information is available [here](#).

### **From the lighter side: Document-phobia Defense Successfully Asserted**

The “docuphobia” defense has been asserted by a Swedish man charged with knowingly operating an unregistered vehicle. The man claimed that due to a crippling fear of official correspondence, he could not open the letter notifying him of his need to register his vehicle.

After hearing the man’s defense – that even the sight of official correspondence results in severe anxiousness – the court determined the man was not acting “knowingly” when he failed to update his vehicle’s registration. Notably, the man was charged with several other charges which were not dismissed.

Read more [here](#).

### **Firm News**

**Terry Harmon** and Jay Pichard, FCHR Commissioner, will lecture on “Gender Identity and The Law: An Update on Transgender and Gender Identity Issues in The Public and Private Sectors,” on October 13, 2016, at B.K. Roberts Hall, FSU College of Law. The seminar is hosted by The Florida Capital Chapter of the Association of Legal Administrators and qualifies for 2 hours of CLE by the Florida Bar. Contact Elizabeth Davis at [edavis@sniffenlaw.com](mailto:edavis@sniffenlaw.com) for registration information.

**Jeffrey Slanker** and **Robert Sniffen** recently presented to the Florida Society of Association Executives on the topic of the Department of Labor’s New Overtime Rules and Regulations. The presentation entitled “The New Frontier: What You Need To Know About the DOL’s New Overtime Rules” highlighted the rule change itself as well as strategies for employers to use in complying with the updated rules.

**Robert J. Sniffen** and **Michael P. Spellman** have again been selected by their peers for inclusion in the 2017 edition of The Best Lawyers in America® in the practice areas of Employment Law – Management, Labor Law – Management, and Litigation – Labor & Employment. Robert J. Sniffen has also been named by Best Lawyers® as the 2017 Employment Law – Management “Lawyer of the Year” in Tallahassee.

### **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.