

# SNIFFEN & SPELLMAN, P.A.

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## EDUCATION LAW ALERT November 2016

### **Department of Education Bans Pre-dispute Arbitration Agreements for Borrower Defense Claims**

The U.S. Department of Education (DOE) issued a Final Rule addressing students' ability to assert school misconduct as a defense to repayment of federal loan programs. In the Rule, the DOE banned all pre-dispute arbitration agreements of schools receiving Title IV assistance for these types of borrower defense claims and set up a new standard for borrower defense claims.

A "borrower defense" is an act by a school relating to making a direct loan – a federal student loan made by the DOE – and provides a defense to repayment of loans. Prior to the DOE's Final Rule, a borrower defense could only be asserted based on an act of the school that would give rise to a cause of action against the school under state law. The new federal standard, however, provides a broader avenue through which students can assert the borrower defense. Once the Final Rule becomes effective, a borrower defense can be asserted for a school's failure to perform its obligations under the terms of a contract with a student, or for a substantial misrepresentation by the school under state or federal law in a court or administrative tribunal.

Schools can still use pre-dispute arbitration agreements for other types of claims.

Read more [here](#).

### **Education Department Releases New Graduate Earnings Data for Career College Programs**

The U.S. Department of Education released data showing that typical earnings of graduates of the thousands of career training programs offered throughout the country. The purpose behind releasing the data is to help students make an informed decision about the college or training program they are attending.

The data provides median and mean earnings for different degree programs at different universities and colleges throughout the country. At a later point, the data collected will be used to calculate the debt-to-earnings rates for each educational institution.

Read more [here](#).

### **Alabama Court Finds School Board's Reasons for Discharging Teacher Were Proper**

An Alabama Circuit Court found that a school district had a legitimate reason to terminate a teacher when the teacher was working for a pawn shop while on paid medical leave from the school. After his termination, the teacher sued and an arbiter found that the school board's decision was arbitrary and capricious and order that the teacher be reinstated. The School Board timely appealed.

In its decision, the court reasoned that while out on paid sick leave from the school, the teacher was actively working in a pawn shop of which he was part owner. He could not provide a substantive excuse for why he could work at one job, but not the other. The teacher continuously failed to provide the school district with information regarding his specific injury or disability. The school correctly identified the reason for the teacher's termination as misrepresenting reasons for absence or leave. The court found that based on the record evidence before it, the school board's reasoning was proper.

Read the decision [here](#).

### **8<sup>TH</sup> Circuit Reinstates FCA Case Over Changed College Grades and Attendance Records**

The Eighth Circuit reinstated a False Claims Act (FCA) suit brought by two former employees of a University. The employees alleged that the University altered grades and attendance records to ensure that it would receive the maximum amount of funding from Title IV. The lower court granted summary judgment in favor of the University.

In rendering its decision, the appeals court found that there was a material dispute of fact about whether the University understood its recordkeeping obligations for funding and whether it intended to comply with those obligations. Accordingly, those issues should be submitted to a jury.

This ruling serves as a warning to all universities to check and re-check that they are complying with all obligations for any funding they are receiving.

Read more [here](#).

### **Is Cyber-bullying Free Speech?**

Cyber-bullying has become a major issue with the ever-expanding prevalence of social media websites. Many school districts have amended their bullying policies to include cyber-bullying and several states have created laws that criminally punish cyber-bullying. However, free speech advocates argue that these laws and policies are overbroad and chill free speech.

A North Carolina case may help resolve the issue. The North Carolina Supreme Court held that the State's new statute, designed to prevent cyber-bullying, was overbroad to the point of being invalid. The law's lack of definitions and its failure to require harm to any potential victims constituted the main issues. Although Courts have held that a state has a compelling interest in

protecting the mental well being of its minors, any law designed to further that interest must be narrowly tailored.

Read more [here](#).

### **U.S. Department of Education Awards \$836,000 to 3 States for Asian American Pacific Islander Data Disaggregation Initiative**

Three States were awarded grants to improve data collection of Asian American Pacific Islander (AAPI) students. Minnesota, Washington State, and Hawaii were awarded a total amount of over \$830,000.00 to help indentify effective ways to improve Asian American Pacific Islander Student's achievement levels and to reduce any opportunity gaps.

The grant is aimed at improving accounting for the diversity in background cultures and languages in the AAPI communities as well as understanding the variances in academic performance. The grant encourages state and local educational agencies to coordinate with one another and obtain data on AAPI populations.

Read more [here](#).

### **From the Lighter Side: Employee Allegedly Fired for Not Smiling**

Trader Joe's employees are urged to provide friendly customer service by walking customers to items they can't locate, allowing for impromptu tastings, and accepting returns with no questions asked. Prior to his death, the company's longtime chief executive, John Shields, said he eliminated prospective managers who didn't smile within 30 seconds of an interview. Many employees, however, are now complaining that they are pressured to appear happy with customers and co-workers.

An employee of the Trader Joe's store on Manhattan's Upper West Side has filed an unfair labor practice charge with the National Labor Relations Board, claiming he was reprimanded repeatedly because managers considered his smile and demeanor to be insufficiently genuine and fired for an overly negative attitude. The employee is challenging Trader Joe's policies, including one which requires employees to maintain a "positive attitude."

Read more [here](#).

### **Firm News**

**Terry J. Harmon** presented at the Legal Issues for Florida School Administrators and Office Personnel seminar titled, "Exceptional Student Education Boot Camp 2016." Presentation topics focused on common issues faced by school district educators, administrators, and ESE staff. The seminar was held November 2, 2016 at in Orlando, Florida.

**Robert J. Sniffen** presented a seminar at the Association of Florida Colleges' annual conference titled "Change is Coming: Preparing For and Understanding the FLSA Overtime Rule Changes."

**Jeffrey D. Slanker** wrote an article titled “11<sup>th</sup> Circuit: Nonemployees can’t bring disparate impact claims under the ADEA” in Florida Employment Law Letter, November 2016 edition.

**Past Issues of the Education Law Alert Available on Website**

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