

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT March 2017

Third Circuit Holds Title IX Applies to Medical Residents

On March 7, the Third Circuit entered an opinion holding that medical residents may bring private causes of action for sex discrimination under Title IX against private teaching hospitals operating residency programs. The Third Circuit's decision of first impression broadened the avenues for plaintiffs to bring claims, finding that such individuals were not limited to causes of action under Title VII.

In the case, *Doe v. Mercy Catholic Medical Center*, a former resident alleged the director of her program sexually harassed her and subsequently retaliated against her for complaining. The Third Circuit reasoned that the Hospital could be sued under Title IX because its medical residency program constitutes an "education program or activity" provided by a private organization principally engaged in the business of providing health care that receives Federal financial assistance.

The Court's ruling also established a test to determine whether a program is educational, which includes such factors as whether the program: is structured as an educational program; allows participants to obtain a degree or certification or qualify for an examination; has instruction, tests, or grades; accepts tuition; and is promoted as educational.

Read more [here](#).

Appeals Court Upholds Student-Led Prayers at School Board Meetings

The U.S. Court of Appeals for the Fifth Circuit upheld a Texas school district's policy of permitting students to deliver prayers before school board meetings. The three-judge panel unanimously held that the school district did not violate the First Amendment's prohibition on a government establishment of religion because a school board is more similar to a legislature than it is to a school classroom.

The Birdville Independent School District has a policy which calls for students to deliver a statement before the monthly board meetings. The statement, which can be a poem or remark, is frequently a religious invocation.

This policy was challenged by a former student of Birdville High School who attended board meetings as a student and now continues to attend as an alumnus. The former student, Isaiah Smith, brought the suit against the District and the school board members individually, claiming to be offended because he believed the district favored religion over nonreligion.

The decision may create a federal circuit split regarding school board prayers.

Read more [here](#).

Department of Education Announced Updated ESSA Plan

On March 13, U.S. Secretary of Education Betsy DeVos delivered a letter to chief state school officers which provided clarity on the implementation of the Every Student Succeeds Act (ESSA) and released a revised template for schools to use.

In her statement, Secretary DeVos ensured greater flexibility for state and local education leaders to develop programs to ensure every child has a chance to learn and succeed. ESSA requires states to help ensure that students have access to excellent teachers and positive, safe learning environments. The new streamlined template maintains the same goals and components and ensures accountability of all parties.

See Secretary DeVos's letter [here](#).

Read more [here](#).

Ruling: Arbitrator Exceeded Authority in Awarding Professor Tenure

The Florida Fourth District Court of Appeals ruled that an arbitrator exceeded his authority when he awarded a professor at Florida Atlantic University tenure after the school initially denied it.

The Fourth DCA affirmed the trial court's ruling that the arbitrator did not have the authority to order the university to promote the professor and award her tenure. Instead, the proceedings should have been limited to whether the school evaluated her application using the right procedure.

The issue, according to the panel, was whether the university used the appropriate procedure for determining an application for tenure and promotion. Once the arbitrator found the university violated the procedure, the arbitrator should have directed the university to review the application using the correct criteria, instead of granting the promotion and tenure.

Read more [here](#).

DOE Settles Title IX Violation with Palo Alto Unified School District

The United States Department of Education's Office for Civil Rights ("OCR") has reached an agreement with the Palo Alto Unified School District regarding the district's mishandling of complaints in violation of Title IX.

In June 2013, the OCR conducted a proactive investigation into the District's handling of Title IX (which prohibits discrimination on the basis of sex in education programs and activities receiving federal assistance) complaints. Almost a year later, the OCR received a complaint

alleging the District failed to respond promptly and equitably to students who reported being subjected to sexual harassment.

On March 8, the OCR issued a letter of findings and resolution agreement, which requires the District to take certain actions, including conducting an investigation to address the deficiencies in the District's responses to Title IX complaints and revising policies and procedures to that effect.

The letter of findings is available [here](#)

The resolution agreement is available [here](#).

Read more [here](#).

From the lighter side: Oxford Comma Help Drivers Win Dispute About Overtime Pay

The oxford comma debate has made its way into the court system, requiring a dairy company in Maine to reimburse its employees for previously unpaid overtime.

The case rested on the phrase "packing for shipment or distribution." Any employees engaging in that task were exempt from overtime. However, dairy drivers argued that because there was no comma after the word "shipment" the term packing applies to both "shipment" and "distribution." The drivers argued that because they do not pack anything, the exemption does not apply. The court, construing the statute liberally, agreed. Despite this ruling, one thing is clear, the quarrel between the Oxford Comma's supporters and detractors is sure to continue.

Read the full story [here](#).

Firm News

Hetal Desai served as Chair for the Leadership Tallahassee Class 34 Government Day Program which was held March 30, 2017.

Join Us for the Sniffen & Spellman Lunch and Learn Seminar Series

This year Sniffen & Spellman is proud to offer quarterly lunch and learn seminars for our clients and friends to discuss and answer questions on important labor and employment and business liability issues.

The first seminar took place on March 30 and **Jeff Slanker** presented on labor and employment compliance changes to look out for in 2017.

If you would like to attend this seminar, please contact Hannah McKinney at hmckinney@sniffenlaw.com or at 850-205-1996.

Tentative dates (topics to be announced later) for the rest of the 2017 series are as follows:

June 29

September 28

December 7

These dates are subject to change.

The seminar will be held at the Firm's office at 123 North Monroe Street in Tallahassee. Lunch will be provided. Space is limited.

We hope you can join us for lunch and a great discussion!

Past Issues of the Labor & Employment Law Alert Available on Website

You may view past issues of the Education Law Alert on the Firm's website: 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.