

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT November 2018

Feds Prod Universities to Address Website Accessibility Complaints

Hundreds of colleges and universities across the country are currently under investigation by the Education Department's Office for Civil Rights for failing to make their websites accessible to people with disabilities. Currently, the federal government recommends that institutions meet web-accessibility standards known as Web Content Accessibility Guidelines 2.0.

Ensuring that every aspect of a university's sprawling web presence meets recommended web-accessibility standards remains a huge challenge, largely due to the sheer volume of content universities has online.

A Department of Education spokesman told Inside Higher Ed that there were 556 open cases as of Aug. 7, 2017. The spokesman said OCR receives thousands of complaints alleging violations of federal civil rights laws every year, and the number "has generally increased over time."

Earlier this year, OCR changed the way it processes web-accessibility complaints, releasing a new case-processing manual. This change means that OCR can dismiss complaints that appear to be part of a pattern, which most likely will significantly reduce the number of web-accessibility open cases.

Read more [here](#).

Sharp Divide Over Trump Administration's Title IX Overhaul

Education Secretary Betsy DeVos recently released a proposed rule that would significantly reduce the obligations of colleges to investigate complaints of sexual misconduct.

DeVos argued that the rule would restore fairness to the process of adjudicating complaints and also adds protections for accused students. But women's groups and advocates for survivors of sexual assault warn that it will undermine the rights of victims. Also, they say the rule will let colleges off the hook for not taking the issue of sexual misconduct seriously.

One of the biggest changes from previous federal policy is that institutions would be responsible only for investigating misconduct that occurred within programs sanctioned by the college. In addition, the proposed regulation would allow colleges to set their own evidentiary standard for making findings of misconduct and allow for cross-examination of students in proceedings.

Read more [here](#).

Title IX - A New Pathway for Sex Discrimination by Medical Residents?

With most of the attention on college sports, it is easy to forget that Title IX covers all aspects of education. In fact, a federal appellate court held just last year that the discrimination and harassment prohibitions of Title IX even extend to medical residency programs in private hospitals.

Under that ruling, a medical resident was allowed to sue her hospital-employer for sex discrimination directly under Title IX without wading through the traditional administrative prerequisites to filing suit under Title VII. Bypassing Title VII's administrative prerequisites not only makes it easier for an employee to sue, but also extends the time in which an employee can bring suit. Title IX's lack of such prerequisites allows direct access to federal courts and could mean an uptick of employment lawsuits brought by medical residents against private hospitals.

Consequently, hospitals and other medical facilities with residency programs should ensure they understand their obligations under Title IX and remain vigilant in their efforts to prevent sexual harassment, discrimination, and retaliation.

For more information on the requirements and application of Title IX, visit [here](#).

Withholding School Security Footage does not Warrant Attorney's Fees

In the recent case of *State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network*, Florida's 4th DCA determined that Cable News Networks and its Co-Plaintiff's had shown good cause warranting disclosure of security footage, but that the School Board had not unlawfully withheld the disclosure of the footage. This case centered around a number of news outlet's requests for the surveillance footage surrounding the Nikolas Cruz's attack at Marjory Stoneman Douglas High School. The school had released some limited footage, but had refused the network's request for complete and unedited surveillance footage of the police response. Finding that the school was entitled to withhold the footage until a good cause had been shown before a court of competent jurisdiction, the Florida Fourth District Court of Appeals determined that the School Board's actions were not unlawful, and that an award of attorney's fees was not warranted under the law.

Read more [here](#).

Court Upholds DACA

In a recent opinion by the Ninth Circuit Court of Appeals, the Court upheld an injunction keeping the Deferred Action for Childhood Arrivals ("DACA") in place. Determining that the rescission of DACA was premised on a misconstrued legal theory, and was therefore reviewable by the Courts, and that the Plaintiffs' opposing the rescission were likely to succeed on the

merits of their case, the Ninth Circuit upheld the preliminary injunction which has kept the DACA in place.

To read the Court's full opinion, visit [here](#).

Florida ends the *Chevron* Defense

The *Chevron* defense is an administrative law principle that compels federal courts to defer to a federal agency's interpretation of an ambiguous or unclear statute that Congress delegated to the agency to administer. Through the passage of Amendment 6, Florida has joined the majority of states in refusing to recognize the *Chevron* defense, and the judiciary may not defer to an administrative agency's interpretations of law or rule.

To read the amendment text, please refer [here](#).

From the Lighter Side: A Case of Mistaken Identity

A Connecticut man alleges he was the victim of police overreach when he pulled over for talking on his cellphone and cited for distracted driving. The driver is contesting the citation with a multi-prong defense strategy with the focal point being the phone was not a phone but rather a McDonalds' hash brown. The driver presented his version of events to a judge as well as showed his call logs demonstrating a lack of calls at the time of the alleged infraction. Despite the compelling arguments the judge was not moved and the driver was found guilty. The saga is not over yet as the driver has moved for a retrial which is currently set for December 7th, 2018.

Read more [here](#).

Firm News

Robert J. Sniffen presented "Open Meetings, Public Records and Ethics," at the Florida Association of Counties New County Commissioner Orientation, in Tampa, Florida.

Jeffrey D. Slanker presented a Continuing Legal Education course to the lawyers of the Florida Department of Health on claims under the Florida Public Whistleblower's Act.

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