

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT

May 1, 2020

Major Update Regarding IDEA and Section 504 Congressional Waivers

As school districts across the United States are aware, the COVID-19 pandemic has had a profound impact on the ability of schools to timely conduct evaluations/reevaluations of students with disabilities and implement certain provisions of IEPs. In light of the impacts, school districts have been waiting for direction from the United States Department of Education (“US DOE”) as to whether it would seek waivers from Congress regarding the Free Appropriate Public Education and Least Restrictive Environment requirements of the Individuals with Disabilities Act (“IDEA”) and Section 504 of the Rehabilitation Act of 1973. In short, the answer is no.

On April 27, 2020, Secretary DeVos announced that she would not be recommending such waivers to Congress and reiterated “that learning must continue for all students during the COVID-19 national emergency.” Secretary DeVos further determined, “there is no reason that a student's access to FAPE cannot continue online, through distance education or other alternative strategies.” However, Secretary DeVos is seeking other waivers relating to the Carl D. Perkins Career and Technical Education Act of 2006, the Adult Education and Family Education Act of 1965, Section 504 of the Rehabilitation Act of 1973, the Elementary and Secondary Education Act of 1965, and the IDEA. A complete list of all waivers being sought are is available at the following link: [Requested US DOE Waivers](#).

More information is available at the following link: [US DOE Press Release](#).

University May Proceed with Title IX Disciplinary Hearing Despite COVID-19 Pandemic

On April 13, 2020, a federal district court in Kentucky issued a decision in Doe v. Transylvania Univ., CV 5:20-145-DCR, 2020 WL 1860696 (E.D. Ky. Apr. 13, 2020) denying a student’s emergency motion for a temporary restraining order. Through the motion, the student sought to prevent Transylvania University from proceeding with a disciplinary hearing during the COVID-19 pandemic. In response, the University argued, among other things, that “an indefinite postponement of the student disciplinary hearing until the present COVID-19 pandemic ends could likely result in separate litigation based on claims of deliberate indifference to accusations of misconduct.” Ultimately, the Court denied the request for a temporary restraining order, finding that the University “has a substantial interest in the fair, prompt, and accurate resolutions of disciplinary matters without undue interference from courts.”

A copy of the opinion is available at the following link: [Doe v. Transylvania Univ.](#)

Court Declines Negative Inference for Student’s Delay in Seeking Temporary Restraining Order in Light of COVID-19 Pandemic

In [Doe v. Princeton Univ., 3:20-CV-4352-BRM-TJB, 2020 WL 1921956 \(D.N.J. Apr. 21, 2020\)](#), a female Princeton University student made several allegations of “intimate partner violence” against another student (Plaintiff). After a lengthy Title IX investigation, the University uncovered a relationship that displayed some traits similar to Bondage, Discipline, Sadism and Masochism (BDSM). At different times, both parties engaged in these behaviors and exchanged consensual choking and spanking among other similar behaviors. Plaintiff was ultimately expelled after an investigation. Subsequently, he filed an appeal seeking to remain at the University under a form of probation until he graduated the following year. The appeal was denied by the University on March 18, 2020.

On April 15, 2020, Plaintiff filed a motion in a New Jersey federal court seeking to temporarily restrain and enjoin the University from expelling him. In the motion, Plaintiff argued that the University reached an “erroneous outcome” after its Title IX investigation and that the University engaged in selective enforcement of Title IX.

On April 21, 2020, the Court denied Plaintiff’s motion and, interestingly, concluded that although Plaintiff had delayed in seeking injunctive relief, the Court would now draw any negative inference against him due to the unusual circumstances surrounding the COVID-19 pandemic.

A copy of the opinion is available at the following link: [Doe v. Princeton Univ.](#)

Class Action Lawsuit Filed Against Liberty University Related to COVID-19 Pandemic

A Liberty University student has filed a federal class action lawsuit against the school claiming that it breached a contract with its students and has “profited” from the COVID-19 outbreak by keeping fees for student services. The lawsuit alleges that the University only opened its facilities as a pretext to retain campus and housing fees. The University has cancelled in-person instruction and on-campus services as a result of the virus. While it has offered a “credit” to certain students who have not returned to campus, the lawsuit alleges it covers only a portion of what the school actually owes. According to the lawsuit, students can pay more than \$12,000 annually for housing and meal plans, as well as other fees. In a statement, the university said the lawsuit lacked legal merit.

Source: [Newsweek.com](#).

Lawsuits from Michigan College Students Demand Tuition Refunds

Students at three Michigan universities have filed lawsuits against their institutions. In addition to refunds for unused room and board, these lawsuits seek a partial refund on tuition for classes that are being taught online rather than in person. The students claim that they paid for an on-campus experience, which includes in-person instruction with professors, but instead are receiving an online education for almost a quarter of the academic year.

Source: Clickondetroit.com.

Return to Work Guidance from the White House

In April, the White House released “Opening Up America Again,” which is a set of guidelines for states on gradually easing restrictions and lockdowns due to COVID-19. The guidelines set out in three phases strategy for easing restrictions. Each phase includes guidance for employers on how to prepare for employees returning to the work place. Under Phase One, teleworking is still encouraged whenever possible; common areas where employees are likely to gather should be closed; and non-essential travel should be minimized along with adhering to CDC isolation guidelines following travel. “Opening Up America Again” also provides criterion on how to transition to Phase Two, and eventually to Phase Three and resuming unrestricted worksites.

Click the following link for [Opening Up America Again](#).

EEOC Updates Technical Assistance Publication

Throughout the month of April, like many other governmental entities, the EEOC has issued several updates to its COVID-19 Technical Assistance Publication. Through this publication, the EEOC updates and expands its technical assistance, and addresses questions arising under the federal employment laws related to the COVID-19 pandemic. The newest version, released April 23, is entitled “[What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)”, and provides answers to a variety of questions, including issues about furloughs, medical inquiries, and employees returning to work who seek reasonable accommodations.

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. 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.

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