

# SNIFFEN & SPELLMAN, P.A.

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## EDUCATION LAW ALERT

May 2021

### **Eleventh Circuit Upholds Dismissal of Race/Sex Discrimination Claim Against a School Board**

In *Ward v. Troup County Sch. Dist.*, 20-11697, 2021 WL 1235170 (11th Cir. Apr. 1, 2021), middle school principal Ernest Ward (African American male) sued the school district claiming it reassigned him to a lower position because of his race and sex. An appellate court upheld a ruling in favor of the school district and concluded that it sufficiently demonstrated a non-discriminatory reason for reassigning Ward.

The school district initially transferred Ward to serve as a principal at another school after several parents had complained about Ward changing student eligibility requirements for advanced content classes. At the new school, Ward's supervisor received complaints from several teachers about his performance and professionalism. It was also discovered Ward completed annual teacher evaluations for several teachers without first performing a formal classroom observation as required. Ward also sent an unprofessional email in which he instructed his staff to "decide if teaching is for you and do what you need to be successful or find another profession." As a result, the school district placed Ward on a mandatory Professional Development Plan to give him an opportunity to improve his performance and conduct. Ward's performance, however, did not improve, and the school district did not recommend him for re-employment as a principal. Instead, he was reassigned to another school to teach physical education.

In dismissing the lawsuit, the Court concluded Ward failed to meet his burden to show the school district considered either his race or sex in its decision to reassign him. Rather than present evidence of race or sex discrimination, Ward simply disagreed with the wisdom of the school district's decision. In its opinion, the Court stated, "That [Ward] subjectively disagrees with the merits of the school district's reasons and with the soundness of the school district's assessment of his performance is not enough to show that the proffered reasons were not the real reasons for the school district's decision."

A copy of the opinion is available [here](#).

### **Delay in Providing Academic Accommodations Leads to Lawsuit Against University**

In *Segev v. Lynn University, et al.*, 19-81252-CIV, 2021 WL 1996437 (S.D. Fla. May 19, 2021), Ryan Segev filed suit against Lynn University under 29 U.S.C. § 794, The Rehabilitation Act of 1973, for its alleged delay in providing him with academic accommodations. Segev suffered from various disabilities, including Asperger's Syndrome, Dyslexia, Dysphasia, and ADHD. He applied and was admitted to attend the University for the fall 2017 semester. Upon being

admitted, Segev indicated to the University he intended to use the support services for students with disabilities, including the University's tutoring center.

In the summer before the fall semester, Segev submitted to the University his full psychological evaluations which set out the various conditions from which he suffered. Allegedly, it was not until November 2017 when he again submitted his psychological evaluations that the University first evaluated the documentation he provided, and it was not until January 2018 that the University first developed a list of proposed accommodations. By this time, however, Segev had already been placed on academic probation for poor academic performance. The University approved accommodations for Segev in March 2018. Segev received a letter of academic dismissal in May 2018.

Segev filed suit claiming the University violated his rights under the Rehabilitation Act by failing to provide him academic accommodations and, as a result, he was dismissed from the University for poor academic performance. Segev argued the University demonstrated deliberate indifference in its delay in providing academic accommodations. The University sought to dismiss the lawsuit, claiming part of the delay was due to circumstances out of its control, including an administrative disruption caused by a hurricane as well as Segev's lack of diligence in attending coaching sessions with his academic adviser. The Court, however, declined to dismiss the lawsuit, and the case will proceed to trial where a jury will determine whether the University acted with deliberate indifference in delaying accommodations for Segev.

A copy of the opinion is available [here](#).

### **Ninth Circuit Hears Oral Argument in Idaho Transgender Sports Lawsuit**

On May 3, 2021, the Ninth Circuit held oral argument in *Hecox v. Little*, Case No. 20-35813, a case involving the question of whether Idaho's law prohibiting biological males from participating in women's sports is unconstitutional. The Idaho law does not contain any limitations regarding participation on men's teams. As background, the District Court entered a preliminary injunction prohibiting Idaho from implementing the law, finding that Plaintiffs were likely to succeed in establishing that the law was unconstitutional as written. *Hecox v. Little*, 479 F. Supp 3d 930 (D. Idaho 2020).

The 45-minute oral argument is available [here](#).

### **US DOE to Hold Series of Public Hearings on Title IX Regulations**

On May 17, 2021, the United States Department of Education ("US DOE") announced that it would hold a series of public hearings "to gather information for improving enforcement of Title IX of the Education Amendments of 1972." The virtual hearings will be held on the following dates and times:

- June 7, 2021, from 9 a.m. - 5 p.m., ET
- June 8, 2021, from 9 a.m. - 5 p.m., ET
- June 9, 2021, from 11 a.m. - 7 p.m., ET

- June 10, 2021, from 11 a.m. - 7 p.m., ET
- June 11, 2021, from 9 a.m. - 5 p.m., ET

Individuals interested in providing comment and/or attending the hearings may do so by registering [here](#).

More information regarding the public hearings is available [here](#).

### **Catherine Lhamon to Lead the US Department of Education's Office of Civil Rights**

US DOE recently announced that Catherine Lhamon will head up the Agency's Office of Civil Rights. The Office of Civil Rights is responsible for the enforcement of civil rights laws in the nation's schools. Ms. Lhamon comes to the US DOE by way of the Office of the President where she worked as Deputy Assistant to the President and Deputy Director of the Domestic Policy Council for Racial Justice and Equity, where she managed the President's equity policy portfolio. Prior to this stop, she chaired the U.S. Commission on Civil Rights, a spot to which she was nominated by President Obama. This is not her first stint at US DOE, previously serving as Assistant Secretary for Civil Rights for the Agency. Ms. Lhamon, an attorney, also has a background litigating civil rights cases at several non-profit organizations and has worked as a law professor at Georgetown University.

The US DOE's Press Release on the matter can be read [here](#).

### **Florida House Bill 149 Revises Student Restraint Requirements and Prohibits Seclusion**

House Bill 149 that would change the discipline process for students with disabilities has been passed by the Florida House of Representatives and Florida Senate and ordered enrolled. The bill prohibits placing a student in seclusion. A student may be restrained only by authorized personnel and only for the time necessary to protect the student and others and only after all positive behavior interventions and supports are exhausted. The bill also prohibits the use of certain restraint techniques and devices. The bill requires school districts to develop a crisis intervention plan for a student who is restrained more than once during a semester.

School districts must adopt policies and procedures related to positive behavior interventions and supports and train authorized personnel on how to use such techniques. The bill also implements a pilot program for video recording in classrooms in which a majority of the students are provided special education services in Broward County public schools.

More information is available [here](#).

### **US DOE Announces Hearings Related to Student Loans**

The issue of students loans has been a hot topic for months, including during the campaign season. On May 24, 2021, US DOE announced that it was scheduling public hearings on June 21, 23, and 24, 2021, "to receive stakeholder feedback on potential issues for future rulemaking sessions." US DOE's press release indicates that potential topics to be addressed through regulations includes, but is not limited to, the following (directly quoted from press release):

- Ability to benefit
- Borrower defense to repayment
- Certification procedures for participation in federal financial aid programs
- Change of ownership and change in control of institutions of higher education
- Closed school discharges
- Discharges for borrowers with a total and permanent disability
- Discharges for false certification of student eligibility
- Financial responsibility for participating institutions of higher education, such as events that indicate heightened financial risk
- Gainful employment
- Income-contingent loan repayment plans
- Mandatory pre-dispute arbitration and prohibition of class action lawsuits provisions in institutions' enrollment agreements
- Pell Grant eligibility for prison education programs
- Public service loan forgiveness
- Standards of administrative capability

More information is available [here](#).

### **From the lighter side: Don't Jump into Animal Exhibits at Zoos!**

Zoo officials in El Paso, Texas plan to press charges against a woman who trespassed into a spider monkey exhibit at the zoo. Of course, the incident was posted to social media gaining the attention not just of admirers but also zoo officials. The video showed the woman underneath a waterfall in the closure. She entered the enclosure to try to feed the monkeys. Zoo officials noted that the woman's actions were prohibited and could have resulted in a worse outcome explaining about spider monkeys:

"These are primates. They are strong; they have canine teeth. They can scratch. We don't interact with them on the daily. And we don't interact with them without a barrier in between us."

The woman was an employee of a law firm which terminated her employment when it learned of her actions, noting their commitment to animals and advocacy.

More can be read [here](#).

### **Firm News**

[Rob Sniffen](#) has been appointed to the Board of Directors of the Community Foundation of North Florida ("CFNF"), a non-profit organization whose mission is to enhance the quality of life in North Florida through the promotion and support of charitable giving. The CFNF serves an eleven-county area, including Calhoun, Franklin, Gadsden, Gulf, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla Counties.

[Rob Sniffen](#) presented "The Wild, Wild Workplace of 2021" at the Florida Society of Association Executive Foundation's Executive Series Luncheon. The presentation focused on

risks to employers in light of the COVID-19 pandemic and steps that may be taken to mitigate that risk.

[Rob Sniffen](#) presented “New Supreme Court Term: Labor & Employment Issues on the Court’s Horizon” at the Florida Bar Labor and Employment Law Section’s Advanced Labor Topics 2021.

[Elmer C. Ignacio](#) authored “Win for Winn-Dixie: Limited-use website isn’t place of public accommodations,” a feature article in the Employment Law Letter publication by HRLaws.com.

### **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.