

# SNIFFEN & SPELLMAN, P.A.

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## EDUCATION LAW ALERT October 2021

### **School Board Files Initial Brief in Transgender Student Bathroom Case as Part of *En Banc* Review Before the Eleventh Circuit; 18 States File Amicus Brief in Support**

On August 23, 2021, the Eleventh Circuit Court of Appeals granted the School Board of St. Johns County, Florida's request for *en banc* review in Adams v. School Board of St. Johns County, Florida (Case No. 18-13592), thereby vacating a prior order entered in favor of Adams. At issue in Adams is whether the School Board's policy requiring students to use the bathroom matching their biological sex is permitted under the United States Constitution and Title IX.

On October 26, 2021, the School Board filed its initial brief in the matter. A group of 18 states filed an Amicus Brief in support of the School Board. Sniffen & Spellman, P.A.'s [Jeffrey D. Slanker](#) and [Terry J. Harmon](#) continue to serve as lead counsel to the School Board in Adams.

### **Supreme Court to Hear Arguments in First Amendment Case**

The Supreme Court will hear much-anticipated arguments in a First Amendment case with broad implications. The question at issue in Wilson v. Houston Community College is as follows: "Does the First Amendment restrict the authority of an elected body to issue a censure resolution in response to a member's speech and actions?" The [Fifth Circuit's holding](#) that a legislature's censure can violate the freedom of speech gave rise to a complex circuit split. On November 2, 2021, the parties will again argue whether Wilson's censure (resulting from a myriad of instances of escalated conflict with his own board) is an acceptable reprimand or a breach of an elected official's right to address a matter of public concern.

Stay up to date on the case [here](#).

### **Office for Civil Rights Has New Leadership**

On October 20, 2021, Catherine Lhamon was confirmed as the Assistant Secretary of the U.S. Department of Education's Office for Civil Rights. Lhamon is Deputy Assistant to the President and Deputy Director of the Domestic Policy Council for Racial Justice and Equity, where she manages the President's equity policy portfolio. Until January 2021, she chaired the U.S. Commission on Civil Rights, to which President Obama appointed her in 2016. Before then, in 2013, Lhamon was named the Assistant Secretary for Civil Rights at the Department of Education.

See the full announcement [here](#).

## **HB 125/SB 616 –Proposed Legislation Raises the Age of Required School Attendance and Removes School District Notification Requirements**

[F.S. 1003.21](#), the statute governing K-12 school attendance, may be altered slightly if this proposed legislation is approved during the 2022 legislative session. Primarily, F.S. 1003.21(1)(c) amends the age required for a student to be exempt from the compulsory attendance requirement. If the law is enacted, a student who attains the age of 18 will not be subject to compulsory school attendance, provided the student still files a formal declaration of intent and files it with the school district. Additionally, the requirement that school districts notify the student's parents of the Notice of Intent is proposed to be stricken, as well as, the parent's statutory right to be notified of this intent by the school district. [F.S.1003.51](#) is also amended to remove the Department of Education's requirement to assist Juvenile Justice Education programs with becoming high school equivalency examination centers.

Read the proposed legislation [here](#).

## **NLRB Codifies Memorandum Defining Some College Athletes as “Employees” Under the NLRA**

The National Labor Relations Board's ("NLRB") General Counsel issued a memorandum, [21-08](#), detailing that certain college athletes are “employees” under the National Labor & Relations Act (“NLRA”). The memorandum recites Section 2(3) of the NLRA as well the common-law agency doctrine for what constitutes an “employee” — a person “who perform[s] services for another and [is] subject to the other’s control or right of control.” According to the memorandum, scholarship football players at NCAA Division I Football Bowl Subdivision and other similarly situated players at private universities qualify as employees because:

- Student-athletes generate profits for the university.
- Student-athletes receive ample financial support from the university.
- Student-athletes are subject to qualification by the NCAA.
- Schools control the means and manner of players’ work.

Additionally, the memorandum summarizes in support: [NCAA v. Alston](#); the [NCAA’s updated name, image, and likeness rules](#); and student-athletes’ recent engagement in collective action on social justice issues. Qualifying student-athletes may file unfair labor practice complaints, which may take years to fully resolve. Employers in the college and university systems should keep their ears to the ground as these cases emerge.

## **SB 188 – Proposed Legislation Seeks to Expand Civic Literacy and Participation and to Establish a New Scholarship Program**

Senator Brandes is sponsoring a bill that seeks to amend [F.S. 1003.44](#) to add an entirely new section that requires the Commissioner of Education to develop a curriculum of Civic Literacy. This topic encompasses a broad swath of pedagogy espousing “meaningful engagement” in the democratic process, from new subjects offered in the classroom to unpaid internships in a government agency and other such opportunities outside of the classroom. The bill also

introduces the “Citizen Scholar Program,” which seeks to provide students with an opportunity to actively implement the lessons learned from the Civic Literacy program in their local governments. This program offers high school students the opportunity to receive up to six undergraduate credit hours.

The bill’s text can be read [here](#).

### **U.S. Department of Education Provides Resource to Support Student Social, Emotional, Behavioral, and Mental Health During COVID-19**

On October 19, 2021, the U.S. Department of Education published a new resource titled “Supporting Child and Student Social, Emotional, Behavioral and Mental Health” in an effort “to provide information and resources to enhance the promotion of mental health and the social and emotional well-being among children and students.”

A U.S. Department of Education press release, as well as a link to the resource guide, is available [here](#).

### **Firm News**

[Rob Sniffen](#) presented “From Complaint to Complete: Navigating the Process of Employment Claims” to the Big Bend Society of Human Resource Management on October 7, 2021.

[Terry Harmon](#) presented “Best Practices for Alternative Dispute Resolution Under the IDEA and Section 504” at a national webinar conducted by LRP Publications on October 14, 2021.

[Terry Harmon](#) presented as a panelist at a Council of School Attorneys national webinar titled “Bargaining Working Conditions During Covid-19” on October 27, 2021.

On September 29, 2021, [Jeff Slanker](#) presented “Managing in Today’s Legal Environment (COVID Legal Issues)” at the Fall 2021 Advisory Board of Director’s Meeting of the Center for Human Resource Management at the Florida State University College of Business. A summary of the presentations can be found [here](#).



[Sniffen & Spellman, P.A.](#) partnered with North Florida College Foundation to sponsor the Top Gun Sharp Shooter Competition at North Florida College on October 16, 2021. At the event, the Firm announced a donation to the NFC Foundation to help support officers seeking recertification courses through the College’s law enforcement academy.

### **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.