

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT November 2021

Governor DeSantis Signs Anti-Mandate Bills Into Law

Florida Governor Ron DeSantis and the Florida Legislature have prohibited educational institutions in Florida from implementing a COVID-19 vaccine mandate on their students. Educational institutions operating within the State, including any schools under the control of a district school board, charter schools, state universities, developmental research schools, Florida College, the Florida School for the Deaf and Blind, and the Florida Virtual School, are now prohibited from requiring students to receive the COVID-19 vaccination.

If a covered institution violates the new state policy, a parent of a student, a student over the age of 18, or an emancipated minor student may bring an action for injunctive relief. If they prevail, they *must* be awarded reasonable fees and court costs. This prohibition on a COVID-19 vaccine mandate also extends to employees, as educational institutes are not permitted to require COVID-19 vaccinations for any full-time, part-time, or contract employee.

Furthermore, K-12 institutions are also prohibited from requiring a student to wear a face mask, a face shield, or any other facial covering that fits over the mouth or nose. However, a parent, at the parent's sole discretion, may allow his or her child to wear a face mask, a face shield, or any other facial covering that fits over the mouth or nose.

Although students at private institutions may not be covered by the Florida's new laws, any vaccine requirement for employees at a private institution are prohibited. The new state laws cover any employer within the state not covered by a federal mandate and prohibit private employers from imposing a COVID-19 vaccination mandate without providing individual exemptions for a variety of reasons. Such reasons include:

1. Medical reasons including pregnancy or anticipated pregnancy;
2. Religious reasons;
3. COVID-19 immunity (proof of a positive test is required);
4. Periodic testing (at no cost to the employee); and
5. The use of employer provided protective equipment.

If an employee is terminated after claiming one of the above-referenced exemptions, an employer may be subject to a fine of \$10,000 per violation for employers with fewer than 100 employees or \$50,000 per violation for employers with over 100 employees.

It is also important for private schools to be aware of the challenges unfolding in federal court and abide by any federal mandate that may apply to them.

Find the full text of all the bills passed during the special session [here](#).

Supreme Court Examines Emotional Distress Damages For Potential Victims of Discrimination In Schools

On November 30, 2021, the Supreme Court heard argument in [Cummings v. Premier Rehab Keller, P.L.L.C.](#), a case that will likely affect the availability of emotional distress damages in multiple civil rights statutes that cover schools. This case involves Jane Cummings, a woman with vision and hearing impairments, who sued a federally funded physical therapy provider for alleged discrimination under the [Rehabilitation Act of 1973](#) after she was denied the provision of a sign-language interpreter. Cummings' suit includes a claim for compensatory damages for emotional distress. Two lower courts ruled that such emotional distress damages are not available under the Rehabilitation Act, or by extension under [Title VI of the Civil Rights Act](#), which bars discrimination based on race and other factors in federally-funded programs.

A decision on these damages is expected to be reached in June of 2022.

U.S. Department of Education Approves Use of American Rescue Plan Funds to Support K-12 Schools and Students, Distributes Remainder to State

Earlier this year, the U.S. DOE distributed two-thirds of the ARP ESSER funds, approximately \$81 billion, to 50 states and D.C. On November 24, 2021 Washington approved of the plan to release the final \$618 million. The distribution of these funds is part of the DOE's effort to support students and districts as they work to reengage students impacted by the pandemic.

Read the full press release [here](#).

Maine's Ban on Public Funds for Religious Schools To Go Before Supreme Court

Supreme Court Justices will hear oral arguments remotely in [Carson v. Makin](#) on December 8, 2021. The case, originally filed in 2018, challenges a state law under which towns without public high schools pay tuition so local students can attend a public or private school of their choice in another community as long as it's not a religious school. A federal judge in Maine [ruled for the state](#) in June 2019 and the 1st U.S. Circuit Court of Appeals upheld his decision. For those in Florida, the case appears eerily similar to [Bush v. Holmes](#), where the legal question hinges on whether Maine is, in practice, barring public money from going to a school based on its religious status or because it would use the money to teach religion.

College Basketball Players File Charge Against the NCAA

On the heels of the NLRB's recent memorandum classifying student-athletes as "employees" comes a one-line charge of unfair labor practice against the NCAA. While the charge only claims that the NCAA has violated labor law by misclassifying student-athletes, it is likely that this case will have further ramifications as it develops.

You can download a PDF of the NLRB charge [here](#).

University Pays \$400,000 to Settle Title IX Claim

The University of Iowa voted to eliminate its women's swimming and diving programs in August of 2020. Members of the women's swimming team brought suit soon after, alleging that the elimination of the program violated [Title IX](#). The University denied any violation of Title IX, stating that the athletic department's budget needed to be balanced amid wide-spread cuts to the programs offered (Including men's swimming and diving, men's gymnastics, and men's tennis). In a settlement, the University agreed to reverse its decision to eliminate the swimming team and included adding a women's wrestling program.

Read more [here](#).

New Civil Rights Data Collection Package Includes “Nonbinary” as Gender Selection

U.S. DOE's Office for Civil Rights submitted its Civil Rights Data Collection (“CRDC”) information request package for public comment on November 18, 2021. This CRDC request contains a few new points of data that OCR wishes to request: COVID-19-related requests to learn the extent to which schools are offering remote and/or in-person instruction, revisions to the restraint and seclusion definitions, and, most notably, the addition of a “nonbinary” option to male/female data categories for those schools and districts that collect data. U.S. DOE stated that the purpose of this addition is to capture accurate and inclusive information about all student identities and experiences.

Read the full announcement [here](#).

From The Lighter Side: Navy Goat Almost Nabbed, West Point Cadets Do ‘Baaaaaad’ Job of Mascot Heist

West Point cadets attempting to nab the U.S. Naval Academy's mascot ahead of the annual Army-Navy football game ended up grabbing a different goat. Mascot theft is a decades-long service academy tradition, typically viewed by the perpetrators as an innocent prank. However, it has been officially off-limits since the early 1990s.

View the full story [here](#).

Firm News

Kristen C. Diot has joined Sniffen & Spellman, P.A. as an Associate. Ms. Diot will be based out of our Tallahassee office. She received her Bachelor of Science from the University of West Florida and her Juris Doctorate degree from Florida State University College of Law. Ms. Diot concentrates her practice in the areas of Labor and Employment, Education, and Civil Rights Law. We are truly excited to have her join the team.

[Elmer Ignacio](#) and [Mitchell Herring](#) presented Rehiring *Legal Do's and Don'ts to Rehiring Laid-Off Workers* and *Employee Classification: Applying the Old "New" ABC Test* in a virtual webinar through BLR – HR Connect Virtual.

Mitchell Herring was quoted in HR Daily Advisor regarding the new tip rule issued by the Department of Labor which takes effect on December 28, 2021.

[Rob Sniffen](#) presented “Recent Trends in Employment Litigation and Insurance Claims” at the fall meeting of the Florida Association of Special Districts.

[Sniffen & Spellman](#) proudly sponsored the Goodwill Classic Golf Tournament on November 1, 2021. The Goodwill Classic fundraiser provides funds that support their mission to provide job training, education, and employment to individuals with significant barriers to employment.

Past Issues of the Education Law Alert Available on Website

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