

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT March 2022

Florida Governor Ron DeSantis Signs HB 1557 into Law

On March 28, 2022, [Governor Ron DeSantis signed](#) HB 1557 into law. The bill has been the subject of contentious debate, both locally and nationally, regarding the interplay of parental rights and state authority in the classroom. The bill expands on parents' rights in Florida by "requiring school districts to adopt procedures for notifying a student's parent if there is a change in the student's services or monitoring related to the student's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment for the student." This bill also prohibits school districts from adopting procedures or forms that prohibit school district personnel from notifying a parent about their student's mental, emotional, or physical health or well-being, or a change in related services. Additionally, and most controversially, the bill prohibits classroom instruction by school personnel on gender identity and sexual orientation to children enrolled in kindergarten through third grade "or in a manner that is no age-appropriate or developmentally appropriate for students in accordance with state standards."

The bill is currently set to take effect on July 1, 2022.

A copy of the bill is available at the following link: [HB 1557](#).

Florida Bill Expands Protections from Discrimination

House Bill 7 (Individual Freedom) is awaiting Governor DeSantis' signature and, if signed, will provide a number of additional protections from discrimination in Florida. Among other provisions, House Bill 7 amends the Florida Educational Equity Act (F.S. 1000.05) by adding the following provisions:

(4)(a) It shall constitute discrimination on the basis of race, color, national origin, or sex under this section to subject any student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe any of the following concepts:

1. Members of one race, color, national origin, or sex are morally superior to members of another race, color, national origin, or sex.
2. A person, by virtue of his or her race, color, national origin, or sex is inherently racist, sexist, or oppressive, whether consciously or unconsciously.

3. A person's moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, national origin, or sex.
4. Members of one race, color, national origin, or sex cannot and should not attempt to treat others without respect to race, color, national origin, or sex.
5. A person, by virtue of his or her race, color, national origin, or sex bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, national origin, or sex.
6. A person, by virtue of his or her race, color, national origin, or sex should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.
7. A person, by virtue of his or her race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions, in which the person played no part, committed in the past by other members of the same race, color, national origin, or sex.
8. Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, national origin, or sex to oppress members of another race, color, national origin, or sex.

(b) Paragraph (a) may not be construed to prohibit discussion of the concepts listed therein as part of a larger course of training or instruction, provided such training or instruction is given in an objective manner without endorsement of the concepts.

The bill is currently set to take effect on July 1, 2022.

A copy of the bill is available at the following link: [HB 7](#).

Eleventh Circuit Adopts ‘Plausible Inference Test’ in University Title IX Case; Siding with the Majority of Circuit Courts

A recent case out of the Eleventh Circuit, *Doe v. Samford University*, Case No. 21-12592 (11th Cir. 2022) involved a challenge to a Title IX investigation following an incident at a college party where one student, Roe, accused another, Doe, of drugging and raping her. On appeal, Doe argued that the Court should implement both the “erroneous outcome” and “selective enforcement” standards from *Yusuf v. Vassar College*, 35 F.3d 709 (2d Cir. 1994). Under the erroneous outcome test, a student must show that he/she was both “innocent and wrongly found to have committed an offense” and that there is “a causal connection between the flawed outcome and [sex] bias.” *Yusuf*, 35 F.3d at 715. Under the selective enforcement test, a student

must allege and ultimately prove “that, regardless of the student's guilt or innocence, the severity of the penalty and/ or the decision to initiate the proceeding was affected by the student's [sex].” *Yusuf*, 35 F.3d at 715.

The Eleventh Circuit opted to follow the theory argued by the Defendant University addressed in *Doe v. Purdue Univ.*, which provides: “do the alleged facts, if true, raise a plausible inference that the university discriminated against [the plaintiff] 'on the basis of sex'?” 928 F.3d 652 (7th Cir. 2019). The Court held that this test more closely adhered to the text of the statute and binding precedent, and thus sided with the Defendant University.

SB 2524 Funding Package Passed; Higher Education Services Expanded; Awaiting Governor's Signature

Senate Bill 2524 is expected to modify many K-12 services in Florida and greatly expand on certain services offered by institutions of higher learning. The following are some of the changes to K-12 as a result of the legislation:

- All virtual school FTE students will be funded in the FEFP; out-of-state FTE students will be funded with FEFP funds only;
- Expansion of school choice options via “wait lists” which must be maintained by the school district; increasing the transportation scholarship funding; and creating the Driving Choice Grant Program to encourage creative alternatives to school transportation;
- Modification of “School Readiness” program funding via three new allocations;
- Requiring the principals of the Early Learning Programs Estimating Conference to develop cost-of care information based on actual school “school readiness” direct services program expenditures and information;
- Requiring students in the juvenile justice program to be funded by the FEFP;
- Requiring the DOE to collect data, annually, from school districts on the amount of time spent on instruction;
- Protection of parental rights by requiring that the decision to withhold information from a parent related to his or her child's well-being be documented and redetermined annually;
- Specifies that teacher evaluation procedures are not a mandatory subject of collective bargaining;
- Requiring that school districts include compensation for longevity of service in calculating salary adjustments for employees on the grandfathered salary schedule;
- Requiring educational entities to use the Agency for Health Care Administration Provider Background Screening Clearinghouse to conduct background screenings; and,
- Establishing a criminal penalty for individuals who knowingly fail to report sexual misconduct by a school authority figure.

The following are changes to higher learning:

- Expanding access to nursing education programs;
- Creating the Student Open Access Resources (SOAR) Grant Program and Repository to provide funding for public postsecondary institution open education resources to expand textbook affordability for students;

- Increasing the number of programs for which a student may receive a Program of Strategic Emphasis tuition and fee waiver;
- Providing instructional materials for private school students free of charge and revises reporting and reimbursement deadlines for the Dual Enrollment Scholarship Program; and,
- Expanding institutional eligibility and student accessibility to the Open Door Grant Program.

A copy of SB 2524 is available at the following link: [SB 2524](#).

EEOC Adds Non-Binary Gender Option to Discrimination Charge Intake Process

On March 31, 2022, the EEOC [announced](#) its intention to “promote greater equity and inclusion for members of the LGBTQI+ community by giving individuals the option to select a nonbinary “X” gender marker during the voluntary self-identification questions that are part of the intake process for filing a charge of discrimination.” The White House also published a [“FACT SHEET”](#) identifying its efforts to advance “equality and visibility for transgender Americans” throughout federal agencies.

U.S. DOE To Hold Corporations and Institutions Responsible for Loan Repayments

On March 23, 2022, the U.S. Department of Education announced updates to its policies on repayment of federally-owed funds. The announced intention is to ensure that even if a school closes, the Department can recover funds from entities that had a direct or indirect ownership interest in the school instead of leaving the bill to taxpayers. Under Secretary James Kvaal stated in a press release that “[t]oday’s steps will ensure taxpayers aren’t held liable for colleges that fail their students or close their doors, especially without the opportunity for students to finish their courses of study.”

The full press release from the Department can be found [here](#).

U.S. DOE Investing \$5.4 Million in Facilitating IDEA Support

In the [March 7, 2022, posting](#) of the Federal Register, U.S. DOE announced it is seeking applications for an Early Childhood Systems Technical Assistance Center to improve outcomes for young children with disabilities in the wake of the pandemic. The Department plans to use \$5.4 million to increase the capacity of IDEA Part C (infants and toddlers) and Part B (school-aged children), section 619 programs (preschool-aged children) to improve and sustain state systems across the county, as well as to encourage and sustain IDEA programs that engage with parents.

Firm News

[Michael Spellman](#) has been selected to America's Top 100 Civil Defense Litigators® for 2022. Selection to America's Top 100 Civil Defense Litigators® is by invitation only and is based on an array of criteria, including the candidate's professional experience, litigation experience,

significant case results, representative high stakes matters, peer reputation, and community impact. Only the top 100 qualifying defense litigators in each state will receive this honor and be selected for membership among America's Top 100 Civil Defense Litigators®. With these extremely high standards for selection to America's Top 100 Civil Defense Litigators®, **less than one-half percent (0.5%) of active attorneys in the United States will receive this honor** — truly the most exclusive and elite level of litigators in the community.

[Kristen Diot](#) authored a piece for the Florida Bar Labor and Employment Law Section's Checkoff Publication on employee privacy issues in the public sector workplace. Her article *Public Employees' Reasonable Expectation of Privacy in the Workplace* can be found on the Section's website [here](#).

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