

# SNIFFEN & SPELLMAN, P.A.

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## EDUCATION LAW ALERT April 2022

### **U.S. DOE's Office for Civil Rights Resolves Investigation Involving Students with Disabilities During the COVID-19 Pandemic**

It was not long ago that school districts across the United States were suddenly tasked with determining how best to serve students with disabilities during the COVID-19 pandemic. The United States Department of Education's Office for Civil Rights ("OCR") recently provided some insight as to how it may view the responsibility of school districts to provide compensatory education for any missed services during the pandemic. On April 28, 2022, OCR announced the resolution of an investigation involving the Los Angeles Unified School District and its alleged failure to provide FAPE during the COVID-19 pandemic. The following information from a press release issued by US DOE is particularly noteworthy (directly quoted):

OCR investigated the district's provision during the pandemic of the free appropriate public education (FAPE) to which federal civil rights law entitles students with disabilities. OCR's investigation found that the district failed to provide services identified in students' Individualized Education Programs (IEPs) and Section 504 plans during remote learning. For example, OCR found that during remote learning, the district:

- Limited the services provided to students with disabilities based on considerations other than the students' individual educational needs.
- Failed to accurately or sufficiently track services provided to students with disabilities.
- Directed district service providers to include attempts to communicate with students and parents—including emails and phone calls—as the provision of services, documenting such on students' service records.
- Informed staff that the district was not responsible for providing compensatory education to students with disabilities who did not receive FAPE during the COVID-19 school closure period because the district was not at fault for the closure. And,
- Failed to develop and implement a plan adequate to remedy the instances in which students with disabilities were not provided a FAPE during remote learning.

As part of the resolution agreement, the Los Angeles Unified School District agreed to engage in the following actions:

- Develop and implement a plan to appropriately assess and provide compensatory education to students with disabilities who did not receive a FAPE during the COVID-19 pandemic.
- Designate a plan administrator to implement the plan for assessment of compensatory education.
- Convene IEP and Section 504 teams to determine whether students were not provided the regular or special education and related aids and services designed to meet their individual needs during remote learning and determine compensatory education.
- Track and report to OCR the implementation of the plan for compensatory education. And,
- Conduct outreach to parents, guardians, students, and other stakeholders to publicize the plan for compensatory education and the roles of the plan administrator and independent ombudsperson.

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

### **Lawsuit Challenging Florida House Bill 1557 Filed in Federal Court**

Florida House Bill 1557, which is the subject of continuing national debate, is now the subject of a lawsuit filed in the United States District Court for the Northern District of Florida. In Equality Florida, et al., v. Ronald D. DeSantis, et al., Plaintiffs contend that HB 1557 is unconstitutional and unlawful discrimination under Title IX of the Education Amendments of 1972. The case is still in its early stages.

As a reminder, HB 1557 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, 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."

### **Florida's "Stop WOKE" Act**

On April 22, 2022, Florida Governor Ron DeSantis signed House Bill 7, commonly known as the "Stop WOKE" Act, into law. The Act, which goes into effect on July 1, 2022, makes it an unlawful employment practice under Florida law to "[subject] **any individual, as a condition of employment** . . . to training, instruction, or any other required activity that **espouses, promotes, advances, inculcates, or compels** such individual to believe" a defined list of concepts related to diversity, equity, and inclusion ("DEI Training"). The Act requires that instruction, materials, and professional development be "consistent with principles of

individual freedom”—and allows Floridians to sue if they believe their school or workplace has violated the law. The prohibited concepts in the Act are as follows:

- Members of one race, color, sex, or national origin are morally superior to another.
- An individual is inherently racist by virtue of his or her race, color, sex, or national origin.
- An individual’s moral character or status as privileged or oppressed is necessarily determined by his or her race, color, sex, or national origin.
- Members of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to race, color, sex, or national origin.
- An individual bears responsibility for, should be discriminated against, or should receive adverse treatment because of actions committed in the past by other members of the same race, color, sex, or national origin.
- An individual should be discriminated against or receive adverse treatment on account of his or her race, color, sex, or national origin, to achieve DEI.
- An individual bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions committed in the past by other members of the same race, color, sex, or national origin in which the individual played no part.
- Virtues such as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist or were created to oppress members of another race, color, sex, or national origin.

The same day Governor DeSantis signed the Act, several individuals filed a lawsuit in federal court in the Northern District of Florida challenging the new law. The plaintiffs argue that the legislation violates the free speech rights of Florida employers and educators and seeks an injunction to stop enforcement of the new law.

We will continue to monitor this lawsuit and will provide updates through the *Education Law Alert* on any significant developments. In the meantime, pending further guidance from the courts, employers with mandatory DEI Training or similar training programs may wish to reach out to counsel for assistance in ensuring their programs comply with the requirements of the Act.

### **Proposed Revisions to Title IX Regulations Expected Any Day**

The US DOE was expected to release new, proposed Title IX regulations in April of 2022. Despite the proposed regulations not being released in April, it is widely rumored that they will be released any day. We will be sure to provide more information in future editions of the *Education Law Alert* once the proposed regulations are published.

More information is available at the following link: [Politico](#).

### **Florida School Districts: Be Aware of New Limitations on Election-Related Expenditures**

Beginning on July 1, 2022, local governments (including school districts) in Florida are required to comply with a new law regulating the use of public funds and personnel to communicate with electors related to issues, referendums, or amendments, including any state questions, that are the subject to a vote of the electors. The new law also includes exceptions to such prohibitions. As we inch closer to election season and the July 1, 2022, effective date of the new law, school personnel involved in approving expenditures should carefully review House Bill 921 (Chapter No. 2022-56).

House Bill 921 (Chapter No. 2022-56) is available at the following link: [HB 921](#).

### **No Decision Yet in Eleventh Circuit Transgender Student Bathroom Case**

On February 22, 2022, the Eleventh Circuit Court of Appeals (*en banc*) heard oral argument in Adams v. School Board of St. Johns County, Florida (Case No. 18-13592). 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. The Court, sitting *en banc*, has not yet issued a decision.

We will issue a Special Alert as soon as a decision is rendered by the Court.

### **Senator Manny Diaz, Jr. Chosen as Florida's Next Commissioner of Education**

On April 29, 2022, the Florida State Board of Education unanimously appointed Senator Diaz as its Commissioner of Education. Diaz will officially take office on June 1, 2022. Diaz is a former public-school teacher and administrator.

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

### **From the Lighter Side: Need a Career Change? Like the cold?**

The authors of the *Education Law Alert* love living in Florida due its balmy weather. That's easy to say in April, and maybe less easy to say in July. Regardless, some thrive in the cold, and those that are interested in a career change might wish to pursue this one. Working at an Antarctic post office where your duties include counting penguins.

The remote post office in Antarctica at Port Lockroy, also known as the "Penguin Post Office," is hiring. The post office is a popular tourist destination, and the area is filled with penguins. The area is in British Antarctic territory and managed by the UK Antarctic Heritage Trust. The job involves working in the post office and monitoring visitor impact on the environment, including counting penguins.

No word on dress code. Hopefully it's not "black tie" like the penguins wear! More about the opportunity, including the tough conditions, [here](#).

### **Firm News**

[Rob Sniffen](#) served as a panel speaker at the 7th Annual Employment Practices Liability Insurance ExecuSummit in Uncasville, Connecticut. Mr. Sniffen co-presented "A New Era:

Updates on the Supreme Court and the Biden Administration” to an audience of insurance professionals and attorneys.

Robert Sniffen and [Jeff Slanker](#) will serve as adjunct professors at Florida State University’s College of Law teaching an executive education course on employment discrimination for the FSU College of Law’s Stoops Center for Law & Business.

Jeff Slanker has been appointed by the Florida Bar President to serve on the Florida Bar’s Federal Court Practice Committee. The Federal Court Practice Committee serves as the Bar’s liaison to the federal courts, federal bar organizations in Florida, the Eleventh Circuit Judicial Conference, and others interested in federal practice.

Jeff Slanker presented at the Florida Society of Association Executive’s Roundtable last month on issues involving website accessibility claims arising under the Americans with Disabilities Act. The topic is hotly litigated and concerns an evolving area of the law.

[Elmer Ignacio](#) presented “Labor and Employment Law: Topics and Special Issues” as a guest lecturer for the Law & Ethics class at Florida A & M University’s Veterinary Technology Program on April 4, 2022.

[Michael Spellman](#) and Elmer Ignacio were featured speakers at the Florida Municipal Insurance Trust 2022 Human Resources and Risk & Safety Management Seminars, which were held throughout April 2022 in Panama City, Pinellas Park, St. Augustine, Orlando, West Palm Beach, and Tamarac.

#### **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.