

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT June 2022

Title IX Proposed Regulations Finally Released

The U.S. Department of Education has finally [released](#) the much-anticipated proposed Title IX rule amendments. Under the proposed Title IX regulations, one of the biggest changes relates to the expanded scope of prohibited sex discrimination. Specifically, sex discrimination will be expanded to include discrimination based on sex stereotypes, sex characteristics, pregnancy and related conditions, gender identity, sexual orientation, and sexual harassment. The proposed regulations also permit, but no longer require, that live hearings be conducted in cases involving postsecondary students. The proposed regulations also expand the responsibility of schools to respond to sex discrimination off campus if such discrimination occurs within the school's education program or activity and eliminate the requirement that schools wait until receiving a signed complaint before addressing sex discrimination. Instead, certain school employees now have reporting responsibilities.

For a more comprehensive explanation of all the proposed amendments, click [here](#).

The public comment period is open for 60 days from the date the proposed regulations are published in the Federal Register. Comments may be submitted at the following link: [Public Comment](#). Click [here](#) for the unofficial version of the proposed rule.

Supreme Court Issues Decision in School District Employee Prayer Case

In [Kennedy v. Bremerton School District](#) (Case No. 21-418), a football coach and school district employee named Joseph Kennedy ("Kennedy") was suspended after kneeling and praying on the fifty-yard line after high school football games. Kennedy was also told such actions violated the Establishment Clause. Kennedy alleged that his suspension was a violation of the First Amendment's Free Speech and Free Exercise Clauses which protect individuals from governmental reprisal for engaging in a person religious observance.

Ultimately, the school district was unable to satisfy strict scrutiny by demonstrating its restrictions served a compelling interest and were narrowly tailored. The Court rejected the school district's arguments that Kennedy's rights must "yield to the [school district's] interest in avoiding an Establishment Clause violation" and students were coerced to pray. Click [here](#) to read the entire Supreme Court decision.

Supreme Court Decides Case Involving Constitutionality of Maine Tuition Assistance that Prohibits Participation in Schools that Provide Sectarian Instruction

The Supreme Court has spoken regarding the Constitutionality of Maine's tuition assistance program for parents who live in districts that do not operate a secondary school or contract with another school in another school district. Under the program, students are prohibited from using state assistance at schools providing sectarian instruction. To determine whether the prohibition violated the Constitution, the Supreme Court in Carson v. Makin (Case No. 19-1746) resolved the following question:

Does a state violate the Religion Clauses or Equal Protection Clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or "sectarian," instruction?

Ultimately, the Court held that "Maine's 'nonsectarian' requirement for its otherwise generally available tuition assistance payments violates the Free Exercise Clause of the First Amendment. Regardless of how the benefit and restriction are described, the program operates to identify and exclude otherwise eligible schools on the basis of their religious exercise. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion." The case has widespread implications for other states that limit the use of state tuition assistance at religious or sectarian schools.

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

Florida Department of Education Finalizes Amended Rule 6A-1.008, Florida Administrative Code, Addressing K-12 School Safety Requirements and Monitoring

On June 14, 2022, the Florida Department of Education finalized amendments to Rule 6A-1.008, Florida Administrative Code. The amendments address "the maintenance of a current listing of mobile panic alert systems in use at public and public charter schools...[and] documentation requirements for threat assessment teams, maintenance of a current school listings in the Florida Safe Schools Assessment Tool, suicide prevention information on grade 6-12 identification cards, and requirements related to bullying and harassment prevention." A copy of the amended rule is available at the following link: [Rule 6A-1.008, Florida Administrative Code](#).

Of note, on June 15, 2022 (the next day), the Department published a [Notice of Development of Rulemaking](#) announcing its intent to further amend the rule to "address new requirements as a result of recent legislation to include: crisis intervention training for safe-school officers, enhanced requirements for threat assessment teams, requiring law enforcement officers be physically present during active assailant emergency drills, and requiring family reunification plans for all public schools."

We will continue to monitor these potential amendments and provide an update in a future edition of the *Education Law Alert*.

School District Settles Sex-Based Harassment Investigation with U.S. Department of Education’s Office for Civil Rights Involving Transgender Student

On June 24, 2022, the U.S. Department of Education’s Office for Civil Rights announced the resolution of an investigation involving the Tamalpais Union High School District (California). The case involved student-on-student sex stereotyping and included the following findings by OCR:

“...the district failed to investigate known allegations that the other student had repeatedly harassed the student about her appearance, her voice, her body, her name, and her pronouns since the start of the 2017-2018 school year. The ongoing harassment the student experienced over the course of months left her feeling unsafe on campus. OCR also found that the district failed to respond promptly or effectively to notice in spring 2018 that this harassment was continuing, and that the district’s investigation of a 2018 incident involving alleged sex-based harassment of the student was neither adequate nor equitable. As a result of these failures, OCR determined that the district permitted the student to be subjected to a hostile environment based on sex that was sufficiently serious to deny or limit the student’s ability to participate in or benefit from the school’s program.”

As part of the resolution agreement, the school district agreed to engage in the following actions:

- Offering to reimburse the student or her parent for past counseling and/or therapy services that the student received after the sex-based harassment began;
- Reviewing and revising, as necessary, its policies and procedures to clarify that harassment based on sex includes harassment based on sex stereotyping;
- Training its employees and contractors who respond to sex-based harassment about the Title IX obligation to respond promptly and equitably;
- Monitoring its schools’ responses to sex-based harassment complaints for compliance with the agreement and Title IX; and
- Providing documentation to OCR demonstrating that the district’s responses to complaints of sex-based harassment during academic years 2020-2021 and 2021-2022 complied with the agreement and Title IX.

A press release published by the Department, including links to the resolution agreement, is available at the following link: [US DOE Press Release](#).

School District Prevailing Party Attorney’s Fees in IDEA Litigation Not Covered by Plaintiffs’ Legal Counsel’s Professional Liability Carrier

On July 1, 2022, the Sixth Circuit Court of Appeals issued an interesting decision in a case involving the issue of whether a prevailing party attorney fee award under the Individuals with Disabilities Education Act’s (“IDEA”) fee-shifting provisions against the legal counsel for a group of students and in favor of four school districts was covered by the students’ legal counsel’s professional liability carrier.

In Wesco Ins. Co. v. Roderick Linton Belfance, LLP. (Case No. 21-3479), after successfully defeating multiple students' IDEA claims through due process and subsequent federal court cases, a group of four school districts sued the students' legal counsel under the IDEA's fee-shifting statute. The school districts argued that the students' attorneys needlessly prolonged the proceedings, asserted inaccurate information, and presented "sloppy pleadings." The students' attorneys then requested that their professional liability carrier defend and indemnify them for any liability for damages. The carrier refused and argued that the applicable policy excluded "sanctions" under federal law from the definition of "damages."

Ultimately, the Sixth Circuit ruled in favor of the carrier finding, among other things, that "[b]ecause the IDEA makes mandatory attorney misconduct a prerequisite to a fees award against a party's lawyer, we agree that this policy exclusion applied."

A copy of the opinion is available at the following link: [Wesco Ins. Co.](#)

From the Lighter Side: Parrot Helps Kangaroo Escape!

Yes – you read that correctly. To be more specific, a parrot named Thor helped a kangaroo named Baxter escape a zoo enclosure in Louisiana by opening the door and freeing him. Baxter was ultimately found running down a street by a passerby. Baxter was safely captured, although the zoo's owners may lose possession of the animal. Don't believe us? Here is a link to the article: [HuffPost.com](#).

Firm News

Sniffen and Spellman is happy to announce that **Hannah McKinney** has become a Florida Registered Paralegal with the Florida Bar. Ms. McKinney has been a valuable member of our Firm for many years now and the lawyers and staff are incredibly proud of Ms. McKinney for this accomplishment and grateful to have her at the Firm.

[Matt Carson](#), [Terry Harmon](#), [Rob Sniffen](#) and [Michael Spellman](#) have been selected to the 2022 Florida Super Lawyers list. Each year, no more than five percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor. Additionally, [Jeff Slanker](#) has been selected to the 2022 Florida Rising Stars list. Each year, no more than 2.5 percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor. Super Lawyers, part of Thomson Reuters, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive, and diverse listing of exceptional attorneys. The Super Lawyers lists are published nationwide in Super Lawyers Magazines and in leading city and regional magazines and newspapers across the country. Super Lawyers Magazines also feature editorial profiles of attorneys who embody excellence in the practice of law. For more information about Super Lawyers, visit [SuperLawyers.com](#).

Sniffen and Spellman is pleased to announce that four of its lawyers have been recognized in this year's edition of Florida Trend's Legal Elite. [Terry Harmon](#) has been recognized in the field of government/administrative law. [Matt Carson](#) has been recognized in the field of civil trial law. And both [Robert Sniffen](#) and [Michael Spellman](#) have been recognized in the field of Labor and Employment Law.

Florida Trend's website provides some information on this honor received by Messrs. Harmon, Carson, Sniffen, and Spellman:

Top 1.4% of Florida lawyers selected

Less than 2% of active Florida Bar members practicing in Florida appear among the exclusive Florida Legal Elite. Now in its 19th year, Florida Legal Elite presents the state's top licensed and practicing attorneys selected by their peers.

Florida Trend invited all in-state members of the Florida Bar to name attorneys whom they highly regard or would recommend to others.

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. 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.