

# SNIFFEN & SPELLMAN, P.A.

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## **Education Law Alert**

**August 2016**

### **NLRB Allows Graduate Students to Unionize**

The National Labor Relations Board (NLRB) reversed its position and found students who perform services connected with their education are employees within the National Labor Relations Act. The issue faced by the NLRB was whether graduate students from Columbia University were mostly students or employees, and whether the teaching and research they are required to perform to obtain their degrees exempt them from employee status. The University relied on a previous 2004 NLRB decision that found that although a majority of graduate students receive financial support from their schools, they do not work in a trade for wages but are being educated to prepare for a career. Students and union groups argued that these students provide essential services for universities and should be considered employees when they “serve their employer.” The new NLRB ruling only affects private universities; public university graduate students may unionize according to state labor laws that define collective bargaining rights and “employee” in the public sector. According to news sources, there are approximately 535,000 graduate students currently enrolled at private colleges who may be affected by the decision.

A copy of the decision can be found at [here](#) under 364 NLRB No. 90, COLUMBIA UNIVERSITY issued 08/23/2016.

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### **DOE Releases Guidance on Public Virtual Education of Children with Disabilities**

On August 11, the Department of Education’s Office of Special Education and Rehabilitative Services issued guidance regarding the rights of students with disabilities attending public virtual school. The guidance discusses the specific requirements provided by the Individuals with Disabilities Education Act (IDEA) for public virtual schools.

The guidance – issued in the form of a Dear Colleague Letter – addresses the supervision responsibilities of states and the applicability of IDEA’s child find provisions to children attending public virtual schools.

The DOE’s guidance emphasizes the importance of ensuring oversight, transparency, and accountability for virtual schools, which are held to high standards with regards to accessibility and quality learning experiences.

Read the Dear Colleague letter [here](#).

Learn more [here](#).

## **DOE Denies Request for For-Profit School to Convert to Non Profit School**

The Department of Education recently denied the request of a for profit college to convert to a nonprofit college, signaling a tougher stance on such issues by the agency. The denial of the request by a Utah-based for-profit college chain to convert to nonprofit status for federal financial aid purposes means that the college is not able to skirt certain regulatory requirements that it would as a nonprofit institution. Part of this concerns the makeup of financial aid, and the source of revenues for the school. At least ten percent of revenue of for profit institutions must come from sources other than federal student aid. The move to nonprofit status also would have lessened the burden of regulations directed towards institutions' employment prospects and outcomes for students. Interesting here is the applicant institution was denoted by the IRS as a nonprofit institution, but the DOE has decided otherwise based on the use of funds at the institution. The move by the DOE is a clear sign that conversion to nonprofit status is not an automatic way to skirt such regulations.

More [here](#).

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## **Study: Schools' 'Affirmative Consent' Policies Are Ineffective**

The results of a year-long study of northern California freshmen indicate that affirmative-consent rules simply do not comport with the realities of college students.

More than 800 universities have incorporated affirmative-consent policies; indeed, California passed a law in 2015 requiring universities to adopt affirmative-consent standards into their discipline policies. The shift to an affirmative-consent standard began after the U.S. Department of Education's 2011 Dear Colleague letter discussing sexual violence and Title IX and directing schools to use a preponderance of the evidence standard in sexual-misconduct hearings.

The study, conducted by a counselor and education professor at San Jose State University, Jason Laker and adjunct lecturer at Santa Clara University, Erica Boas, demonstrated that only one out of 15 students reported abiding by affirmative-consent standards.

See more [here](#).

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## **DOE Takes Actions Addressing Religious Discrimination**

The Department of Education recently shared a series of actions intended to confront discrimination and promote inclusive school environments. The actions include a new website on religious discrimination, an updated civil rights complaint form, an expanded survey of religious-based bullying in public schools, technical assistance for schools, and outreach programs served to confront religious harassment in education.

The Department's actions serve to underscore its concern for the well-being of all students, says the director of the Department's Center for Faith-Based and Neighborhood Partnerships.

Other recent efforts include: new data from public schools, government collaboration in the form of roundtables with the Justice Department, a new fact sheet regarding civil rights barriers, and more. The actions come on the heels of President Obama's proclamation of "Religious Freedom Day, 2016" in January.

[Read more](#).

**From the Lighter Side: Judge Removed from Bench for Letting Lawyer Wear Robe and Rule on Cases**

Circuit Court Judge Valerie Turner of suburban Chicago was removed from the bench after allegations that she let a lawyer wear her robe and rule in at least two of her cases. The faux-adjudicator, Rhonda Crawford, is a lawyer and unopposed judicial candidate for a judgeship covering parts of Chicago and the south suburbs. Crawford, who was “job shadowing” Judge Turner to learn about judicial duties, reportedly ruled on at least two traffic cases. Chief Judge Timothy Evans entered an order reassigning Judge Turner to administrative duties on August 17.

Read the Chief Judge’s Order [here](#).

See more [here](#).