

# SNIFFEN & SPELLMAN, P.A.

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## EDUCATION LAW ALERT February 2020

### **U.S. Department of Education Announces Title IX Enforcement Initiative in K-12 Schools**

On February 26, 2020, the United States Department of Education (“US DOE”) announced that its Office for Civil Rights would proceed with a new initiative to “combat the troubling rise of sexual assault in K-12 public schools.” According to a press release issued by US DOE, the new initiative will include the following:

- **Compliance Reviews:** OCR will conduct nationwide compliance reviews in schools and districts, examining how sexual assault cases are handled under Title IX, including sexual incidents involving teachers and school staff. OCR will work with school districts to identify and correct compliance concerns.
- **Public Awareness and Support:** OCR will focus on raising awareness of the issue of sexual assault in K-12 schools, including making information available to educators, school leaders, parents and families.
- **Data Quality Reviews:** OCR will conduct Data Quality Reviews (DQRs) of the sexual assault/offenses data submitted by school districts through the CRDC. As a part of conducting DQRs, OCR will partner with the National Center for Education Statistics (NCES) and will work with districts to ensure that incidents of sexual assault/sexual offenses are being accurately recorded and reported through the CRDC.
- **Proposed CRDC Data Collection:** OCR has proposed, for the 2019-2020 data collection, to collect more detailed data on sexual assault. The proposed data collection includes incidents perpetrated by school staff or school personnel. If adopted, the inclusion of this data would make the CRDC collection the first universal collection to gather such data systemically by school.

The US DOE press release related to the new Title IX initiative is available at the following link: [US DOE](#).

### **Ninth Circuit Dismisses Suit Challenging Legality of Oregon School District Policy Permitting Transgender Students to Use Bathrooms, Locker Rooms, and Showers Matching Their Gender Identity**

On February 12, 2020, the Ninth Circuit Court of Appeals affirmed a federal district court’s dismissal of a lawsuit brought by students alleging that the Dallas School District No. 2 in Oregon violated Title IX and the Constitutional rights of students/parents by adopting a policy that

permitted transgender students to use bathrooms, locker rooms, and showers matching their gender identity. In the suit, Plaintiffs alleged that students should be required to use the facilities matching their biological sex determined at birth. In affirming the dismissal of the lawsuit, the Ninth Circuit stated, among other things, as follows:

We agree with the district court and hold that there is no Fourteenth Amendment fundamental privacy right to avoid all risk of intimate exposure to or by a transgender person who was assigned the opposite biological sex at birth. We also hold that a policy that treats all students equally does not discriminate based on sex in violation of Title IX, and that the normal use of privacy facilities does not constitute actionable sexual harassment under Title IX just because a person is transgender. We hold further that the Fourteenth Amendment does not provide a fundamental parental right to determine the bathroom policies of the public schools to which parents may send their children, either independent of the parental right to direct the upbringing and education of their children or encompassed by it. Finally, we hold that the school district's policy is rationally related to a legitimate state purpose, and does not infringe Plaintiffs' First Amendment free exercise rights because it does not target religious conduct. Accordingly, we affirm the district court's dismissal with prejudice of the action.

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

### **Federal Court in Texas Holds that Failure to Have Adequate Policies Protecting Against Sexual Abuse Does Not Automatically Trigger Liability under Title IX**

On February 14, 2020, a federal district court in Texas entered an order dismissing with prejudice numerous federal claims brought by the parents of a K-12 student. The lawsuit arose after the parents of the student were informed by a school district employee that their child was sexually assaulted in a school bathroom by another child. Among other claims, the Plaintiffs alleged that the school district violated Title IX by failing "to have policies, procedures, practices, and customs in place to ensure Doe was not abused."

Although the school district provided the court with copies of its policies, the Court reasoned, "[a]ssuming for the sake of argument that these policies do not adequately protect against sexual abuse, this still does not trigger liability under Supreme Court standards because it amounts to a violation of an agency-written rule and not Congressionally-written law."

A copy of the opinion is available at the following link: [Sadler v. Greensville Ind. Sch. Dist.](#)

### **Proposed Florida Legislation Requires Moment of Silence**

Florida Senate Bill 946 continues to move through the Florida Legislature. The bill mandates that the principal of each public school "require teachers in first-period classrooms in all grades to set aside at least 1 minute, but not more than 2 minutes, daily for a moment of silence, during which students may not interfere with other students' participation." The bill also provides that teachers

“may not make suggestions as to the nature of any reflection that a student may engage in during the moment of silence.” If adopted, the bill will take effect on July 1, 2020.

More information is available at the following link: [SB 946](#).

### **U.S. Department of Education Launches SchoolSafety.gov**

On February 10, 2020, the US DOE announced the launch of SchoolSafety.gov. According to the US DOE, the Federal School Safety Clearinghouse website “is a one-stop-shop of resources for K-12 administrators, educators, parents, and law enforcement to use to prepare for and address various threats related to safety, security, and support in schools.” The new website also includes the following (quoted from press release):

- The School Safety Readiness Tool, an assessment that assists users in evaluating their respective school's safety posture across 10 foundational elements of school safety. After completing the assessment, users are provided an action plan with task prioritization, options for consideration, aligned resources, and grant opportunities specific to individual needs;
- A Secure Information Sharing Platform for designated school personnel to share school safety ideas, practices, plans, and tactics in a protected environment; and
- A wide array of resources and best practices on key school safety topics to assist with building awareness within the school community to promote vigilance and build capacity to respond to incidents.

The US DOE press release related to the creation of SchoolSafety.gov is available at the following link: [US DOE](#).

### **Missouri Legislation Proposes Amendment to State Constitution Regarding Sex-Separated Interscholastic Athletics**

The Missouri Legislation is considering an amendment to its State Constitution requiring “[a]ny student who is enrolled in a publicly funded secondary school and who participates in any sex-separated interscholastic athletic contest organized by the school shall be eligible to participate only in athletic contests organized for persons of the same biological sex included on the student's birth certificate.” The Missouri legislation is available at the following link: [House Joint Resolution No. 82](#).

Of interest, there is also a pending lawsuit in [Connecticut](#) brought by three female high school students alleging they have been deprived of scholarship opportunities and fair competition in athletics, because transgender females have been permitted to participate in female athletics.

## **From the Lighter Side: When Animals Attack**

Deer 1, Human 0. A surveillance video in a North Carolina McDonald's parking lot caught a deer committing aggravated assault on a man. Although the animal was unarmed (literally), it did quite the damage by knocking the unsuspecting victim to the ground. Fortunately, the victim managed to keep his Diet Cokes from spilling.

A video of the incident is available at the following link: [FoxNews.com](http://FoxNews.com).

## **Firm News**

[Rob Sniffen](#) presented "Legal Issues: Workplace 2020" to the Florida Society of Association Executives in Tallahassee, Florida. The presentation addressed employment law trends impacting statewide associations.

Sniffen & Spellman, P.A. is pleased to announce that seven of its lawyers have received Martindale-Hubbell® Peer Review Ratings™. [Robert J. Sniffen](#), [Michael P. Spellman](#), Francis X.J. Lynch and [Mark K. Logan](#) were given an "AV-Preeminent" rating from their peers. This rating is the highest given by Martindale Hubbell and is based upon confidential ratings by members of the Bar and judiciary. Further, John R. Eubanks, Jr. and [Dawn P. Whitehurst](#) were given a "Distinguished" rating from their peers. Lisa B. Fountain received a "Notable" rating from her peers. Only lawyers with the highest ethical standards and professional ability receive a Martindale-Hubbell Peer Review Rating. AV®, AV Preeminent®, Martindale-Hubbell Distinguished<sup>SM</sup> and Martindale-Hubbell Notable<sup>SM</sup> are Certification Marks used under license in accordance with the Martindale-Hubbell® certification procedures, standards and policies.

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