

# SNIFFEN & SPELLMAN, P.A.

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## EDUCATION LAW ALERT October/November 2023

### **Florida Board of Governors Proposes Regulation Implementing SB 266**

A portion of Senate Bill 266, which was signed into law in May and took effect on July 1, 2023, prohibits Florida's public colleges and universities from spending state or federal dollars on programs or activities that advocate for diversity, equity, and inclusion, or political or social activism. The legislation directs Florida's Board of Governors (BOG) to adopt regulations to implement the law for the state's public universities, and the Board of Education to adopt rules for the public colleges.

BOG's proposed regulation defines diversity, equity, and inclusion as "any program, campus, activity, or policy that classifies individuals on the basis of race, color, sex, national origin, gender identity, or sexual orientation and promotes differential or preferential treatment of individuals on the basis of such classification." Political or social activism is defined as "any activity organized with a purpose of effecting or preventing change to a government policy, action, or function, or any activity intended to achieve a desired result related to social issues, where the university endorses or promotes a position in communications, advertisements, programs, or campus activities."

The proposed regulation states that an organization advocates for diversity, equity, and inclusion when it "(a) [a]dvantages or disadvantages, or attempts to advantage or disadvantage an individual or group on the basis of race, color, sex, national origin, gender identity, or sexual orientation, to equalize or increase outcomes, participation or representation as compared to other individuals or groups; or (b) [p]romotes the position that a group or an individual's action is inherently, unconsciously, or implicitly biased on the basis of race, color, sex, national origin, gender identity, or sexual orientation."

The proposed regulation would also require public universities to designate "agents" to enforce the prohibitions on diversity, equity, and inclusion spending.

The regulation makes exceptions for student-led organizations, certain activities by schools, and activities where following the state law would jeopardize federal funding or accreditation. The regulation also exempts programs aimed at helping military veterans, Pell Grant recipients, first-generation college students, nontraditional students, certain transfer students from the state's community colleges, students from low-income families, and students with "unique abilities."

A copy of the proposed regulation can be viewed [here](#).

### **11th Circuit Rules on Student Bullying Case**

The 11th Circuit Court of Appeals issued an opinion involving the Demopolis City Schools school district (“DCS”) in a case involving bullying and harassment of a student which ultimately led to the student’s suicide. The case involved a nine-year-old student who was subject to bullying at her elementary school. The student’s family attempted to address the bullying with the school several times. The school created a safety plan for the student to leave the classroom whenever she felt threatened. A few months later, the nine-year-old committed suicide. The student's family filed a lawsuit with several claims against the school system and school officials.

The Court found that the family had to show that there was deliberate indifference to sustain their Title IX and Title VI claims, intentional discrimination to sustain their equal protection claims, and arbitrary or conscience-shocking conduct to sustain their substantive due process claims.

The Court concluded that the family failed to present sufficient evidence to show that the Defendants’ conduct satisfied any of these standards. The Court wrote that a school district is not deliberately indifferent simply because the measures it takes to stop the harassment or discrimination ultimately are ineffective and the evidence did not establish any action or lack of action by DCS or any of the named individual defendants that amounted to deliberate indifference.

Find the whole opinion [here](#).

### **Israel-Hamas War Sparks First Amendment Discussion Across College Campuses**

On October 24, 2023, the State University System of Florida, in consultation with Governor Ron DeSantis, issued a memorandum calling for the deactivation of the State University System of Florida student chapters of Students for Justice in Palestine, citing that the organizations’ headship, National Students for Justice in Palestine, self-identifies as a part of the terrorist led movement by Hamas. The memorandum relied on §775.33(3), Florida Statutes, which makes it a first-degree felony to “knowingly provide[] material support or resources to a designated foreign terrorist organization, or attempt[] or conspire[] to do so.”

The student chapters in the State University System of Florida responded that their chapters do not operate under the national organization. Thus, the organizations have not been forced to deactivate by their universities.

The matter has sparked much discussion in the First Amendment context regarding freedom of speech and freedom of association.

Find the whole memo [here](#).

## **Firm News**

Maria A. Santoro has joined the Firm as Senior Counsel. Ms. Santoro will be based out of our Tallahassee office. She received her Bachelor of Arts degree in Business and English from Florida State University and her Juris Doctorate degree from Western Michigan University. Ms. Santoro practices in the areas of Employment, Commercial Litigation, Personal Injury Litigation, Medical Malpractice Automobile Litigation, Construction, and Administrative Law. She is also AV® Preeminent rated by Martindale-Hubbell, in the Bar Register of Preeminent Women Lawyers and a member of the American Board of Trial Advocates and Past President of the American Board of Trial Advocates, North Florida Chapter.

Teresa Cooper Ward has joined the Firm as Of Counsel. Ms. Ward practices in the areas of employment, real estate, probate, and estate planning. Her practice includes representing state agencies, colleges and universities in state and federal courts, and she has several successful appeals to her credit in the areas of employment and public records law. She graduated from University of South Florida and Stetson College of Law.

The Firm sponsored Flagler College's Presidents Golf Classic on November 10, 2023 which raises funds that benefit Flagler College's athletic scholarship fund.

On November 3, 2023, the Firm sponsored and participated in the first annual Cornhole for Cancer tournament benefitting TMH Foundation.

## **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.