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Legal Landscape: An Update

2019 National Policy Training Conference

Maree Sneed & Michelle Tellock

Introductions and overview

What's going on with the legal landscape...?

- In the courts
- At the U.S. Department of Education
- In terms of other federal executive action
- In Congress
- Beyond the government

Courts

Latino Action Network et al. v. New Jersey

- In May 2018, coalition of civil rights groups and students sued the State of New Jersey, calling on state leaders to desegregate NJ's public schools
 - Nearly half of all black and Latinx students in the state attend schools that are more than 90% non-white (ranked as 6th most segregated state for black students, 7th for Latinx)
- Unusual: bringing school segregation lawsuit in state (not federal) court
 - Only fifth lawsuit to be brought in state court, relying on state constitution
 - U.S. Supreme Court has held that school districts generally cannot be held responsible for school segregation unless the districts deliberately discriminated
- New Jersey's legal landscape may be hospitable to this kind of lawsuit
 - State constitutional provision bans segregation in public schools (only state to do so)
 - State courts in NJ have taken enforcement responsibilities seriously, including by eliminating distinction between *de jure* and *de facto* segregation (1965), and ruling that a state education commissioner could mandate crossing boundary lines to foster racial balance (1971)
- Plaintiffs aren't calling for any specific remedy, have endorsed various strategies as "feasible" options, including magnets and inter-district transfers

Students for Fair Admissions v. Harvard University

- Plaintiff organization has accused Harvard of discriminating against Asian-American applicants, argues that Harvard should use race-blind admissions tactics
- Fifteen-day trial was conducted in October 2018 before U.S. District Court Judge Allison Burroughs
- No set timeline for decision, opinion could be released any day
- Both sides have indicated they will appeal
 - Could this case reach the U.S. Supreme Court?
 - What would it mean for Harvard? For other colleges and universities?
- In the meantime, another cycle of college admissions is in progress

Christa McAuliffe Intermediate School PTO, Inc. v. DeBlasio et al.

- Several groups are suing New York City Mayor DeBlasio and schools Chancellor Carranza for making changes to an admissions policy they claim discriminates against and disproportionately affects Asian-American students
- In July 2018, DeBlasio and Carranza announced a plan to boost diversity in NYC's competitive specialized schools by, among other things, expanding the Discovery Program, which offers a number of seats to low-income students
- The plaintiffs allege that changes to the Discovery Program (focused on high-poverty schools) would prevent Asian-American students from vying for those seats and violate their equal protection rights under the 14th Amendment
 - Plaintiffs argue that the plan would cause 11 of 24 majority Asian-American schools and 20 of 191 majority black schools to lose their eligibility for the Discovery Program

U.S. Department of Education

Proposed revisions to Title IX regulations

- On November 29, the U.S. Department of Education published a notice of proposed rulemaking to amend the Department's regulations implementing Title IX of the Education Amendments of 1972
- Under Title IX, a school that receives federal funds must ensure that no student is deprived of access to educational opportunities on the basis of sex
- The proposed regulations would, among other things:
 - Define sexual harassment prohibited by Title IX
 - Specify *when* a school is obligated to respond
 - Specify *how* a school must respond to reports of sexual harassment
- Public comments were accepted until Jan. 30; the Department is now reviewing them and is expected to issue a final rule

Withdrawn “Rethink School Discipline” Guidance Package

- On December 21, the U.S. Department of Justice and U.S. Department of Education announced they were withdrawing the policy and guidance reflected in certain documents released under the Obama Administration:
 - Dear Colleague Letter on Nondiscriminatory Administration of School Discipline dated January 8, 2014;
 - Overview of the Supportive School Discipline Initiative dated January 8, 2014;
 - Guiding Principles: A Resource Guide for Improving School Climate and Discipline, dated January 8, 2014;
 - Appendix 1: S. Department of Education Directory of Federal School Climate and Discipline Resources, dated January 8, 2014;
 - Appendix 2: Compendium of School Discipline Laws and Regulations for the 50 States, Washington D.C., and Puerto Rico, dated January 8, 2014; and
 - School Discipline Guidance Package FAQs, dated January 8, 2014.

Withdrawn “Rethink School Discipline” Guidance Package

- As justification for withdrawing the guidance, the Departments said:
 - In March 2018, the President announced the formation of a Federal Commission on School Safety, which was directed to make recommendations about whether the guidance should be rescinded. The Commission decided it should be rescinded;
 - “States and local school districts play the primary role in establishing educational policy, including how to handle specific instances of student misconduct and discipline, and in ensuring that classroom teachers have the support they need to implement appropriate discipline policies”; and
 - “The Departments have concluded that the Guidance and associated documents advance policy preferences and positions not required or contemplated by Title IV [which enables the Attorney General to bring lawsuits in case of discrimination] or Title VI [which prohibits discrimination on the basis of race, color, or national origin]”.
- The Departments said they “are firmly committed to vigorously enforcing civil rights protections on behalf of all students.”

Initiative to address use of restraint and seclusion

- On January 19, Secretary DeVos announced that the U.S. Department of Education will launch an initiative to address the possible inappropriate use of restraint and seclusion in schools
- Overseen by Office for Civil Rights, in partnership with Office of Special Education and Rehabilitative Services
- Initiative will include:
 - Compliance reviews by OCR's regional offices
 - Collection and analysis of data through Civil Rights Data Collection
 - Technical assistance to schools on legal requirements of Section 504, Title II, and IDEA relating to the use of restraint and seclusion

Other federal executive action

Federal Commission on School Safety

- In December 2018, the Commission released a 177-page report detailing 93 “best practices and policy recommendations for improving safety at schools across the country.”
- The report addresses various topics related to security planning, including:
 - Prevent
 - Character development and a culture of connectedness
 - Cyberbullying
 - Protect & Mitigate
 - Training school personnel
 - Best practices for school building security
 - Respond & Recover
 - Active shooter preparedness and response

State of the Union address and reaction

- President urged lawmakers to “pass school choice for America’s children.”
- Secretary DeVos commented:

"Too many American students are far too limited by the current education 'system' that assigns them to a school building based solely on where they live. That means their family income largely dictates their education options. But the freedom to choose the right education should not only be for the rich, powerful and connected. All students should have the freedom to pursue an education that develops their talents, unleashes their unique potential and prepares them for a successful life.

"The President was exactly right tonight to remind the nation of his call to expand education freedom. I look forward to continuing to work with Congress on ways to give students opportunities to pursue the education that engages their curiosity, unlocks their creativity and empowers them to reach their fullest potential. It's time to do what's best for kids and get to work."

Congress

New Assistant Secretary for Civil Rights

- On June 7, 2018, Kenneth Marcus was narrowly confirmed as Assistant Secretary for Civil Rights
- Controversy and public opposition surrounded hearing:

Officers
Chair
Judith L. Lichtman
National Partnership for
Women & Families
Vice Chairs
Jacqueline Pata
National Congress of American Indians
Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Hilary Shelton
NAACP
Secretary
Jo Ann Jenkins
AARP
Treasurer
Lee A. Saunders
American Federation of State,
County & Municipal Employees
Board of Directors
Helena Berger
American Association of
People with Disabilities
Kimberly Churches
AAUW
Kristen Clarke
Lawyers' Committee for
Civil Rights Under Law
Lilv Eskelsen Garcia

January 11, 2018



OPPOSE CONFIRMATION OF KENNETH MARCUS FOR ASSISTANT SECRETARY FOR CIVIL RIGHTS

Dear Senator,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, and the 31 undersigned organizations, we are writing to urge opposition to the confirmation of Kenneth Marcus to serve as Assistant Secretary for Civil Rights at the U.S. Department of Education. **Mr. Marcus has not demonstrated a willingness and ability to enforce civil rights law and protect all students in our country from discrimination and he is therefore unsuited to lead the Department of Education's Office for Civil Rights.**

New Civil Rights Subcommittee in U.S. House

- Democratic majority in the House
 - Democratic majority on the House education and labor committee
- New subcommittee on civil rights and human services
 - To be led by Rep. Suzanne Bonamici (D-OR), who is a former consumer protection lawyer
 - Rep. Bonamici: “I will fight for all students and workers so they can learn and work in safe, welcoming environments. We can and must do more to strengthen public education, our workforce and needed support services for families.”

Beyond the government

Slurs, bullying, and hazing

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NEWS 02/01/2019

Swastika Found At High School Library In Northern Westchester

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NEWS / PINELLAS

Players accuse East Lake High baseball team of racial slurs, bullying, hazing

The allegations were made by two former players suing the Pinellas County School District for negligence — and failing to stop the harassment.


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Los Angeles Times

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More frosty weather on the way for California, and the snow might stick awhile



Glowing reviews tout counterfeit cash on the dark web



Lakers understand the cautionary tale of giving up too many draft picks for a...



Man choked by off-duty L firefighter wins \$7.4-million settlement

L.A. NOW LOCAL

When children formed a swastika with their bodies, it sparked a conversation on hate

Uptick in racial harassment?

- The U.S. Department of Education's Office for Civil Rights saw a significant increase in the number of complaints it received regarding racial harassment in schools in 2017.
 - The increase represents the biggest rise in this category since at least 2009.
 - OCR did not receive more than 600 complaints until fiscal year 2017, when the number climbed to 675, a nearly 25 percent increase from the previous year.
 - Previously, the number had bounced between a low of 362 and a high of 577.
- Schools must address race-based harassment that:
 - Has a nexus to school;
 - Creates a hostile environment; and
 - Is known or should be known to school administrators.

Lawsuits related to bullying and harassment

- Isabella Grunspan and her father, Gabriel, filed a lawsuit in federal court against Jefferson County School District (CO), the U.S. Department of Education
- They allege Isabella was discriminated against and harassed for being Jewish at her middle school from 2016 – 2017; they say the school district was indifferent to her claims of antisemitism and then retaliated against her and her father after she spoke out and filed civil rights claims with the Department's Office for Civil Rights (OCR)
- In response to the family's complaint, OCR concluded that harassment did occur and was severe, but that the school responded appropriately to the incidents; the family claims OCR's report was flawed
- The family is seeking \$2 million in damages

Contact Us

Maree Sneed

Maree Sneed is recognized in the education industry as a lawyer who helps school districts, independent schools, educational institutions, and educational companies solve their most complex problems. For three decades, clients have sought Maree's advice as a result of her experience working in the education system, her legal acumen, her public policy work, and her ability to make connections between the education and legal arenas.

Maree has advised clients in the education sector on a broad range of issues, including social media, bullying and cyberbullying, harassment, sex and race discrimination, English language learners, and magnet schools. She also advises on privacy, including the Family Educational Rights and Privacy Act; special education/IDEA; equitable access and opportunities; integration and desegregation; school facilities; contracts; Title IX, Title VI, and 504 compliance; and charter schools.



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Areas of focus

Education

Education

JD Georgetown University Law Center – 1983
EdD The George Washington University – 1979
M.A.Ed. University of Oklahoma – 1972
B.A. University of Oklahoma - 1970

Contact Us

Michelle Tellock

Michelle Tellock has dedicated her career to helping educational institutions fulfill their missions. Michelle's practice covers a range of regulatory, litigation, and transactional matters. During this time of incredible growth and change in the industry, Michelle helps colleges, universities, accrediting organizations, and other educational institutions and associations maintain focus on their most critical priorities by interpreting government regulations, identifying potential compliance concerns, and adapting policy and procedures with minimal disruption to existing operations. Michelle's deep knowledge of higher education lets her tailor her advice to an individual institution's specific needs.

Michelle was very active in the legal community in law school. She gained firsthand experience as a legal intern in the Yale University Office of the Vice President and General Counsel. She was also a leader of the Education Adequacy Project, a clinic focused on school finance litigation. She also served on the board of Yale Law Women and as an editor of both the Yale Journal of Law & Feminism and the Yale Law & Policy Review.



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Areas of focus

Education

Education

JD Yale Law School – 2011

B.A. The Johns Hopkins University - 2007



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