

Connecticut's U.S. Attorney to Focus on Discrimination in Schools

Education Law Notes

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Educational institutions – including public and private schools, colleges, and universities – may have to defend various types of discrimination claims brought by students, and in various arenas. In addition to federal court litigation of Title IX sex discrimination and sexual harassment cases (which are much in the news lately), schools must also respond to claims of sex, race, age, and disability discrimination through the complaint and investigatory process of the U.S. Department of Education's Office for Civil Rights. Other public agencies are also seeking to address such claims, for example (as you may have read here), the Connecticut Commission on Human Rights and Opportunities has indicated interest in investigating and assuming primary jurisdiction over claims by students of discrimination and harassment in public schools.

One often thinks of the U.S. Attorney's Office as dealing exclusively with criminal matters, but it also has authority to pursue both criminal and civil remedies for civil rights violations. For example, Connecticut's U.S. Attorney's Office and the Civil Rights Division of the U.S. Department of Justice were jointly involved in settling a disability discrimination claim brought by a student with depression who Quinnipiac University allegedly forced to take a medical leave. And the US Attorney's Office announced that it has settled cases of discrimination that have resulted in monetary settlements to parents, training for providers, and policy changes for educational programs and systems.

Formation of Civil Rights Working Group. Against this backdrop, the U.S. Attorney's Office has announced the formation of an "Educational Opportunities Civil Rights Working Group" to address (and help prevent) civil rights violations by public and private educational institutions, afterschool programs, summer camps and day care centers. U.S. Attorney Deirdre Daly says her office regularly receives complaints from parents and caregivers of discrimination against their children on the basis of disability, gender, gender identity, and limited ability to speak English, along with an increasing number of complaints about bullying, sexual harassment and segregation in public and private schools.

Wide Governmental Participation in Working Group. Participating in the Working Group are representatives from numerous public agencies and advocacy groups, including the U.S. Department of Health and Human Development, U.S. Department of Education, Connecticut Department of Education, Connecticut Commission on Human Rights and Opportunities, Connecticut Office of Protection and Advocacy for Persons with Disabilities, African American Affairs Commission, Latino and Puerto Rican Affairs Commission, Asian Pacific

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American Affairs Commission, National Association for the Advancement of Colored People, Connecticut Children's Medical Center, Connecticut Afterschool Network, Connecticut Recreation and Parks Association and the Connecticut Summer Camp Network. The press release announcing the formation of this Working Group states that it will be "developing and implementing a strategic action plan to address civil rights violations through educational outreach programs as well as law enforcement actions." The press release further says: "Through aggressive outreach and enforcement initiatives, the U.S. Attorney's Office and our working group partners strive to eliminate these violations to improve the health and welfare of all children and young adults." It remains to be seen whether the Working Group will be as concerned with assisting schools via education and training to prevent possible claims as it much as with finding and pursuing cases of discrimination. It also remains to be seen if the Working Group will reach out to educational institutions and **their** advocacy groups to ensure their input.

A Proactive Response is Required. There is no question that schools at every level are under ever-increasing scrutiny. To ensure that the discussion above remains purely academic, it is imperative that every school, school district, college, or university comprehensively examine and evaluate its educational and employment policies and practices to minimize risk from discrimination claims. It is paramount that every school have in place effective non-discrimination and anti-harassment policies and procedures. Without being exhaustive, the policies and procedures should be well-publicized so as to ensure effective access, and must ensure that claims are investigated thoroughly and addressed promptly and effectively. The failure to have the basic policies in place, and the failure to follow such policies, are frequent grounds for liability. Finally, every institution must provide training to faculty and staff on how to properly respond to complaints of discrimination and harassment.

Other Discrimination Laws may be Implicated. Substantively, since one of the cases mentioned in the U.S. Attorney's press release involved a claim of disability discrimination, it is important that schools are familiar with their obligations under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. These laws require educational institutions to offer reasonable accommodations to persons with disabilities. In another area that has drawn significant attention, school districts must ensure that when addressing sexual misconduct, they take reasonable measures to protect the victims of sexual assault from further contact with alleged perpetrators, and take steps to cure the effect of a hostile environment on other members of the educational community. Finally, the U.S. Department of Education itself has previously pronounced its concern about racial disparities in educational opportunities and student discipline.

We hope the Working Group will prove to be a source of guidance (rather than confrontation) for administrators in Connecticut's public and private schools, colleges, and universities who are increasingly squeezed between aggressive private and government enforcement efforts on the one hand, and the threat of suit by those who claim they have been wrongfully accused of discrimination or harassment on the other. The appropriate line between a commitment to nondiscrimination and a commitment to the due process rights of the accused can be a thin and difficult line to walk. It is wise to think and plan ahead about how you will

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handle any type of discrimination or harassment complaint that may be raised in any forum.

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