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Educational Institutions Face Heightened Scrutiny

AGENCIES, COURTS SIGNAL A NEW FOCUS ON CIVIL RIGHTS VIOLATIONS

By **PETER MURPHY**

Connecticut has some of the finest educational institutions in the country, including award-winning public school systems, internationally famous private schools and elite public and private colleges and universities. Connecticut also has great day care centers, summer camps, trade schools and other such institutions. Despite providing quality education and training, recent events suggest that these institutions will be under increased federal and state scrutiny regarding their compliance with civil rights laws.

When acting as employers, educational institutions are subject to laws such as Title VII of the Civil Rights Act of 1964 (Title VII), the Americans with Disabilities Act (ADA) and the Connecticut Fair Employment Practices Act. They also are places of public accommodation, which makes them subject to requirements to make their facilities and programs open and accessible to individuals with disabilities. These requirements place significant compliance burdens on educational institutions, and federal and state agencies have announced that they will be increas-

ing their monitoring efforts in 2015.

I recently attended a dinner where a representative of the Connecticut Commission on Human Rights and Opportunities spoke about the agency's focus for the year ahead. Among other things, the representative noted that the agency was looking for more cases involving educational institutions, from both employment and student perspectives. These comments are supported by a review of the CHRO's new blog, which recently highlighted the CHRO's sponsorship of an October 2014 panel discussion at the Legislative Office Building regarding campus sexual assault. A second blog post responded to discriminatory events at two high schools in Connecticut, and quoted Cheryl Sharp, deputy director of the CHRO, as saying: "We are deeply troubled by the reports of discriminatory conduct at school functions."

Executive Director Tanya Hughes then urged "anyone who believes they may have been subjected to any type of disparate treatment due to their protected status to immediately contact us about filing a claim." These statements demonstrate that educational institutions will see increased scrutiny from the CHRO in 2015.

Anyone dealing with governmental agencies knows that when state agencies come knocking, federal agencies often are close behind. This is no different with educational institutions, which have obligations to students and employees under federal laws such as the ADA. In early January, the U.S. attorney in Connecticut announced a settlement



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that required a private university to pay more than \$30,000 and agree to provide training to all staff members on the ADA. According to the U.S. attorney, the investigation leading to the settlement "determined that [the university] discriminated against the complainant by placing her on mandatory medical leave because of her depression, and failed to consider modifying its mandatory medical leave policy to permit the complainant to complete her course work while living off campus by attending classes either online or in person."

In 2014, the U.S. Attorney's Office had another disability-related settlement with a summer camp run by a hospital.

Peter J. Murphy is a member of Shipman & Goodwin's labor and employment practice. He represents public- and private-sector employers in cases involving claims of discrimination, wrongful termination, First Amendment retaliation, and other labor and employment disputes. He can be reached at pjmurphy@goodwin.com.

An employee of the hospital had a child with a disability, and the employee had to use leave under the Family and Medical Leave Act to care for her child after the camp refused to accommodate that child and her insulin pump. In the settlement, the camp agreed to implement new policies addressing children with disabilities, and publish a statement of that policy on its website.

Following these settlements, the U.S. attorney announced the formation of an Educational Opportunities Civil Rights Working Group “to address civil rights violations by public and private educational institutions, after-school programs, summer camps and day care centers.” This group is made up of representatives from federal and state agencies (including the CHRO), trade groups, and advocacy organizations such as the NAACP and Asian Pacific American Affairs Commission.

It is unclear how this group will function, and what, if any, policies or initiatives it will recommend. Nevertheless, it demonstrates that the U.S. Attorney’s Office and related federal agencies will pay increased attention to educational institutions’ compliance with laws related to their employees and students in 2015.

In addition to increased scrutiny from state and federal agencies, educational institutions will also continue to face lawsuits brought by plaintiffs’ attorneys on behalf of employees and students. A December Connecticut federal court ruling demonstrates the overlapping student and employment issues that can be found in such cases. In that case, a nurse attempted, and failed, the national examination to become a certified registered nurse anesthetist 16 times over the course of 11 years. Despite these setbacks, the plaintiff was determined to take the examination again. A change in the national certification process, however, required her to complete an anes-

thesia educational program before taking the examination for the 17th time. The plaintiff enrolled in St. Raphael’s School, which trains nurse anesthetists. That program has an academic component and a clinical component that is like a residency, where students work in hospital settings with anesthesiologists. Students in the program receive health insurance and a stipend of \$125 per week, although those benefits were never offered to the plaintiff. She was, however, covered under a student professional liability malpractice insurance policy while enrolled in the program, and received vacation time and sick days from the program. After academic difficulties, the plaintiff was removed from the program.

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The student sued under Title VII, claiming that she actually was an employee of St. Raphael’s, and that she was discriminated against on the basis of sex and illegally retaliated against because of her filing of a sexual harassment complaint against a supervisor before her removal. Judge Dominic Squatrito found that there were issues of fact on whether the plaintiff was an employee of St. Raphael’s because of the

limited benefits she was eligible for or received when enrolled, and because of St. Raphael’s control over her clinical experiences. Many educational institutions employ students in a variety of capacities or have benefit programs for graduate students like those used by St. Raphael’s. For those institutions, this case demonstrates that such students may have a broader range of legal protections than expected.

A Connecticut federal court case from earlier in 2014 involved more typical discrimination claims faced by educational institutions, where an employee or student is denied an accommodation and brings suit after termination or removal. In that case, Judge Michael Shea addressed attempts by Lincoln College of New England to dismiss a former student’s lawsuit under Title III of the ADA, Section 504 of the Rehabilitation Act, and related state laws and causes of action. Shea dismissed all of the claims except the student’s claim under Section 504, finding that the “evidence is sufficient to raise a genuine issue of material fact as to whether plaintiff’s professors knew of the inadequate accommodations and failed to adequately respond, i.e., whether they were ‘deliberately indifferent’ to plaintiff’s entitlement to a quiet place to take her exams.”

As these announcements and recent cases make clear, schools, camps and other educational institutions in Connecticut will face increased scrutiny from the CHRO, federal agencies and plaintiffs lawyers in Connecticut, especially in regard to disability accommodations and access to educational buildings and programs. Updating policies and procedures, training staff members and addressing an employee’s or student’s request for accommodations individually and thoroughly will ensure compliance with the law and reduce the chance of scrutiny from state and federal agencies.