



# Federal Update for Higher Education

## March 14, 2025



# Reminders

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- This information is good as of now. In an hour, it might not be. Stay tuned for new Executive Orders (EOs) and judicial or legislative responses.
- The political aspects of this are undeniable, but our first priority is simple: clarity.
- Remember not to lose the forest for the trees. What is the big picture? That will help guide our next steps.

# Disclaimers

**We can't help ourselves. We're Lawyers.**

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- We are not giving you legal advice.
- Consult with legal counsel regarding specific situations.
- You will receive slides for today's presentation after we've concluded.
- No, we aren't recording this – because we expect things to shift quickly.

# Agenda

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- Department of Education Updates
- February 28, 2025 "Racial Preferences" FAQ
- South Carolina DEI Bill
- Perkins Coie LLP Executive Order & TRO
- Religion and DEI?
- Funding Freeze Update
- Maine Title IX Investigation Update

# Department of Education Update

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- March 3, 2025 – Linda McMahon confirmed as Secretary.
- Secretary McMahon identified three objectives in her March 3, 2025, remarks "[Our Department's Final Mission](#)":
  - Parents are the primary decision makers in their children’s education.
  - Taxpayer-funded education should refocus on meaningful learning in math, reading, science, and history—not divisive DEI programs and gender ideology.
  - Postsecondary education should be a path to a well-paying career aligned with workforce needs.
- March 11, 2025 - [Reduction in Force](#):
  - 50% of Department Employees are expected to be impacted by the RIF.
  - "The Department of Education will continue to deliver on all statutory programs that fall under the agency’s purview, *including formula funding, student loans, Pell Grants, funding for special needs students, and competitive grantmaking.*"

# Department of Education - Columbia University

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- On [March 3, 2025](#), the Departments of Health and Human Services and Education, and the General Services Administration, announced a "comprehensive review of Columbia University's federal contracts and grants" as a result of ongoing Title VI investigations.
- On [March 7, 2025](#), the Departments of Education, Justice, and Health and Human Services, in addition to the General Services Administration, cut \$400 million in federal grants from Columbia as a result of "continued inaction in the face of persistent harassment of Jewish students."

# Department of Education – Anti-Semitism

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- On [March 10, 2025](#), the Department announced that it sent letters to 60 Universities "warning them of potential enforcement actions" if they do not "fulfill their obligations under Title VI to "protect Jewish students on campus, including uninterrupted access to campus facilities and educational opportunities."
- On [January 29, 2025](#), President Trump signed the "Additional Measures to Combat Anti-Semitism" Executive Order which prompted the Department to launch five investigations.
  - What EO says, in pertinent part – the federal government's failure to protect Jewish students was "astounding," and, in requested reports on how to combat this, provide guidance for institutions "so they may monitor for and report activities by alien students and staff relevant to those grounds and for ensuring that such reports about aliens lead, as appropriate and consistent with applicable law, to investigations and, if warranted, actions to remove such aliens."

# Columbia University - Arrest of Mahmoud Khalil

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- Mahmoud Khalil, a legal permanent resident, was a student at Columbia until December 2024 and lived in University owned apartments.
- Khalil was arrested Saturday, March 8, 2025, by immigration authorities.
- According to the Department of Homeland Security, Khalil was arrested due to allegations that he "led activities aligned to Hamas."
- The [Secretary of State](#) said that the administration will be "revoking the visa and/or green cards of Hamas supporters in America so they can be deported."
- On March 10, 2025, Khalil's deportation was [blocked](#) by a federal judge.
- Khalil is now suing Columbia to prevent the release of his disciplinary records.



# February 28, 2025 "Racial Preferences" FAQ

(1 of 4)

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- 15 questions focused on:
  - Prohibition of racial preferences in decision-making, particularly for application-based programs (admissions, housing, scholarships, mentorship, “administrative support”)
  - Use of DEI programs, generally
  - Dept. of Ed.’s OCR investigation and enforcement process
- Takeaways
  - Dept. of Ed. is taking an expanded view of the *Students for Fair Admissions* decision, meaning that they are applying the Court’s holding beyond just admissions practices
  - “A school may not legally take account of a student’s race in distributing those benefits or resources, even if race is only being considered as a positive or plus factor...”
    - Dept. takes a “zero-sum” view of competitive processes (advantage to one is necessarily a disadvantage to another)
  - Schools “may not administer or advertise scholarships, prizes, or other opportunities offered by third parties based on race.”

# February 28, 2025 "Racial Preferences" FAQ

(2 of 4)

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- All-comers policies
  - Any programming, including graduation ceremonies, housing, or “any other aspect of school life that allows one race but not another or otherwise separates students, faculty, or staff based on race” is impermissible.
    - Such programming, even if intended for a beneficent purpose, is “legally indefensible” under the “separate but equal” rationale rejected in the Brown v. Board decision.

# February 28, 2025 "Racial Preferences" FAQ

(3 of 4)

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- DEI programs, generally, are permissible
  - “Whether a policy or program violates Title VI does not depend on the use of specific terminology such as ‘diversity,’ ‘equity,’ or ‘inclusion.’”
    - Cultural historical observances are permissible, assuming the programs are open to all, regardless of race
- “Schools must consider whether any school programming discourages members of all races from attending,” either through exclusion, discouragement, or by creating a hostile environment based on race for individuals who do participate in the program.

# February 28, 2025 "Racial Preferences" FAQ

(4 of 4)

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- Takeaways
- “DEI”-related curriculum
  - Dept. is prohibited from “exercising control over the content of [elementary and secondary] school criteria...”
  - Be cautious of mandatory courses or required curricula that could create a “racially hostile environment” for students of a particular race
- Application essay prompts that invite discussion of race are permissible
  - Discussion of race must be “concretely tied to a quality of character or unique ability that the particular applicant can contribute...”

# Department of Education – Title VI Investigations

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- [March 14, 2025](#) - Department of Education announced that it would be investigating 45 IHEs for TVI infractions related to the:
  - "use of racial preferences and stereotypes in education programs and activities,"
  - "race-exclusionary practices in graduate programs," and
  - "Impermissible race-based scholarships and race-based segregation."
- Citing possible violations of TVI through partnership with an organization that reportedly "limits eligibility based on race."
- In [February](#), the Department released a DCL addressing prohibited discrimination in "decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life..."

## March 7th – NYT article

activism	cultural heritage	implicit bias	prejudice
affirming care	cultural sensitivity	inclusiveness	pronouns 
anti-racism	DEI	increase diversity	racial inequality
assigned at birth	disability	inequalities	sexuality
at risk	discriminatory	injustice	social justice
biases	disparity	intersectionality	socioeconomic
biologically male	diverse groups	LGBTQ	stereotypes
BIPOC	diversity	marginalized	systemic
black and latinx	equal opportunity	most risk	they/them
clean energy	equitableness	multicultural	transgender
climate crisis	feminism	Mx	traumatic
community	gender ideology	nonbinary	unconscious bias
diversity	Gulf of Mexico	people + uterus	underprivileged
confirmation bias	hate speech	pregnant people	victims

# South Carolina DEI Legislation

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- Bills Introduced by both chambers of the South Carolina Legislature on February 6 and February 20, 2025 called the "Ending Illegal Discrimination and Restoring Merit-Based Opportunity Act." (not yet law)
- Prohibits public institutions of higher education from promoting diversity, equity, and inclusion and requires them to promote individual initiative, excellence, and hard work
- Also prohibits public institutions of higher education from contracting with third parties who promote diversity, equity, and inclusion
- Coming soon to a state near you?

# DEI Legislation Tracker Updates

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- 24 state bills introduced in 2025 to restrict or prohibit certain "DEI" activities, similar to the South Carolina legislation
  - 5 of those bills have already been tabled, failed to pass, or vetoed.
  - 19 of the bills still pending include the prohibition of DEI offices
    - Some specify that the prohibition applies to public institutions; others specify that the prohibition applies to institutions that receive state funding
- Congressional House Rep Tom Tiffany (R-Wisconsin) HR 771 in January 2025
  - Prohibits federal funding to higher education institutions that intentionally discriminate in the workplace



# Perkins Coie LLP Executive Order & TRO

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- March 6, 2025 – "Addressing Risks from Perkins Coie LLP" Executive Order
  - Section 1: Citing "dishonest and dangerous activity" and racial discrimination against attorneys, staff, and applicants, the EO stated that Perkins Coie should not have access to national secrets or be deemed "responsible stewards of any Federal Funds."
  - Section 3: Directed agencies to, in part, take steps to cease or terminate all contracts with Perkins Coie LLP
  - Section 4: Orders the EEOC to "review the practices of representative large, influential, or industry leading law firms for consistency with Title VII..."
  - Section 5: Directed agency heads to limit access to Federal Government buildings to any employees of Perkins Coie when "such access would threaten the national security of or otherwise be inconsistent with the interests of the United States" and prohibits Agency officials from hiring employees of Perkins Coie absent a waiver.
- March 11, 2025 – Perkins Coie Filed a Motion for a TRO

# Perkins Coie's Motion for TRO

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- In its motion, Perkins Coie called the EO "an unconstitutional assault on Perkins Coie, its lawyers, its employees, its clients, the legal profession, and the rule of law."
- The motion argued the Order was designed to "destroy the firm" and "unless restrained, the Order realistically might succeed in that objective within days based on the weight of the federal pressure being deployed against the Firm's clients"
- Perkins Coie argued that the EO, but in particular Sections 1, 3, and 5:
  - exceeds the President's constitutional authority,
  - violates the First Amendment by retaliating against the Firm for association with clients and advocating positions the President disagrees with,
  - deprives the Firm of liberty and property interests without due process,
  - interferes with the ability of the Firm to represent its clients, and
  - deprives the Firm of equal protection under the law.

# Perkins Coie: TRO Granted

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- [March 12, 2025](#) – U.S. District Judge Beryl Howell issued a TRO blocking the enforcement of sections 1, 3, and 5 of the EO.
- Ordered the parties to file a status report by March 14, 2025, describing the steps taken to ensure compliance with the order.

# Religious Support for DEI?

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- Georgetown Law dust-up between Interim U.S. Attorney for D.C. and Dean of the Georgetown University Law Center
- DEI prohibitions - Religious Exemption?
  - 42 USC 2000bb-1 – The government shall not substantially burden a person's exercise of religion unless it can demonstrate that the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.
- Note: "Person" includes nonprofit religious colleges

# Funding Freeze Update

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- [March 10, 2025](#), United State District Court for the District of Columbia issued an Order enjoining the "unlawful" impoundment of congressionally appropriated foreign aid.
- Plaintiffs alleged the Executive violated the separation of powers including those related to Congress' authority over foreign policy and its "exclusive power over spending" and the "expression of those powers through statues that constrain the Executive's authority."

# Maine Title IX Updates

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- February 25, 2025 - HHS Issued a "Notice of Determination" to the State of Maine stating that Maine's Department of Education violated Title IX because it allowed transgender athletes to compete on teams according to their gender identity. The matter was referred to the Department of Justice.
- March 10 - USDA froze funding to the University of Maine
  - Sen. Susan Collins said funding had been restored.

# Upcoming Higher Ed Webinars

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- Free: Employee Sexual Misconduct Cases - March 27, 2025
- Free: AI and Student Conduct on Campus - April 10, 2025
- Free: Sexual Misconduct Hearings - April 24, 2025
- Free: Title IX Litigation Update – May 29, 2025

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