



# Federal Update for Higher Education

## April 1, 2025



- 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.**

- 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
- EO Updates
- EEOC Guidance on DEI Initiatives
- Immigration Notes

# Department of Education Update

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- March 20 EO – Improving Education Outcomes by Empowering Parents, States, and Communities
  - Maintains that the Ed. Secretary shall ensure that department funds are subject to compliance with federal law, including that any recipient of federal assistance “terminate illegal discrimination obscured under the label ‘diversity, equity, and inclusion’ or similar terms and programs promoting gender ideology.”
- March 31, 2025 – Final Warning Letter to Maine for violations of Title IX
  - By April 11, 2025, MDOE must execute a Resolution Agreement or the matter will be referred to DOJ for enforcement.

# FERPA Update

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- March 27 – Investigation into California Department of Education
- March 28 – Investigation into Maine Department of Education
- March 28 – New Dear Colleague Letter: Priority Concerns
  - Parental right to inspect (school districts only)
  - Student safety re: death threats against other students
  - Annual notification of rights
  - Military recruiters (school district provisions)
  - State Education Authorities must submit assurances that all school districts are complying with FERPA by April 30, 2025

# DOE/Joint Task Force to Combat Antisemitism



- March 13 – Columbia received a letter from the Joint Task Force to Combat Antisemitism that outlined nine "preconditions" for negotiating the restoration of their cancelled grants and contracts
- March 17-20 – OCR opened 8 new Title VI shared ancestry investigations
- March 21 – Columbia published their commitments in accordance with the March 13 Joint Task Force letter
- March 24 – DOE publishes a press release on Columbia's efforts  
"...a positive first step in the university maintaining a financial relationship with the United States government."

- Nat'l Assn. Of Diversity Officers in Higher Education v. Trump
  - March 14 – Fourth Circuit issued a temporary stay of the lower court's injunction
    - EOs are temporarily enforceable pending a decision from the lower court

# EO Updates – Employment/Private Sector

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- Law Firm EOs
  - March 12 – Perkins Coie TRO granted
  - March 21 – Paul Weiss EO rescinded by agreement
  - March 28 – Jenner & Block TRO granted
  - March 28 – Wilmer Hale TRO granted
  - March 28 – Skadden Arps rescinded by agreement
- EEOC Updates
  - March 17 – Letters to 20 law firms
  - March 19 - "What you should know about DEI-related discrimination at work"  
Guidance and technical assistance document

# EEOC Guidance (1 of 4)

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- Under Title VII, an employer initiative, policy, program, or practice may be unlawful if it involves an employer or other covered entity taking an employment action motivated—in whole or in part—by race, sex, or another protected characteristic.
- Limiting membership in workplace groups to certain protected groups can constitute unlawful segregation.
- Splitting employees up into separate protected groups for training can also be unlawful.

## EEOC Guidance (2 of 4)

- There is no such thing as "reverse" discrimination; there is only discrimination – relies heavily on *Ames v. Ohio Department of Youth Services*, oral argument in Ohio Supreme Court in February 2025
  - In 6th Circuit (affirmed in this case) - the case law has been that, where a non-minority employee sues under Title VII, the plaintiff must show that the employer was the rare employer that discriminated against the majority.
  - Usually shown through specific circumstances of supervisor and successful candidate/comparator analysis and sometimes make up of employees at employer
  - At oral argument, justices seemed poised to reverse

## EEOC Guidance (3 of 4)

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- Employers instead should provide training and mentoring that provides workers *of all backgrounds* the opportunity, skill, experience, and information necessary to perform well, and to ascend to upper-level jobs.
- Employers also should ensure that “employees *of all backgrounds* . . . have equal access to workplace networks.
- Decisions on unlawful even if race, sex, or other protected characteristic was just one factor among other factors contributing to the employer's decision.
- Demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination.
- There is not a "diversity interest" exception to the EEOC's Title VII rules.

- An employee may be able to plausibly allege or prove that a diversity or other DEI-related training created a hostile work environment by pleading or showing that the training was discriminatory in content, application, or context.
- In cases alleging that diversity trainings created hostile work environments, courts have ruled in favor of plaintiffs who present evidence of how the training was discriminatory (for example, in the training's design, content, or execution).

# Immigration Notes

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- Students at multiple institutions have been arrested for deportation, seemingly in relation to protests.
- Title VI investigation requests from OCR are reportedly asking for immigration status of students
- SEVIS requests

# Upcoming Higher Ed Webinars

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- 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

Register for these and other trainings at [www.brickergraydon.com/events](http://www.brickergraydon.com/events).

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