



Federal Update for Higher Education

July 15, 2025

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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) & 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: What has happened since June 10?

- DoE RIF SCOTUS Update
- Accreditor Connections
 - Harvard's accreditor notice
 - Columbia receives warning
- Institutional Operations
 - UVA President steps down
 - Grant assurances
 - Reimbursement rate cap
- Trans Athletics
 - *Skrmetti* decision
 - U Penn agreement
 - California findings
 - 2 new SCOTUS cases
- New Investigations
 - CA Title VII
 - GMU Title VI
- Indicators of Future Federal Focus Areas
 - Loan repayment
 - Tuition for non-citizens
 - Nationwide injunctions

Department of Education RIF update: McMahon v. New York, 606 U.S. ____ (2025)



- Remember, May 22: Preliminary Injunction granted by the District of Massachusetts regarding Department of Education RIF.
- NEW, July 14: SCOTUS issued a stay pending the First Circuit Court of Appeals' disposition of the underlying case.
 - The 6-3 majority did not offer explanation
 - Secretary McMahon issued a press release stating, “We will carry out the reduction in force to promote efficiency and accountability” and return education to the states
 - Dissenting, Justices Sotomayor, Kagan, and Jackson, wrote: the majority “decision is indefensible. It hands the Executive the power to repeal statutes by firing all those necessary to carry them out... the threat to our Constitution’s separation of powers is grave”
- Next: Pending disposition of First Circuit Court of Appeals case.

Columbia's accreditor warning

- Remember: June 4th OCR notified Middle States Commission on Higher Education (MSCHE) of violation finding deliberate indifference towards the harassment of Jewish students & June 6 MSCHE FAQ doc
- NEW, June 26th (press release July 1): Columbia on MSCHE non-compliance warning.
 - Remains accredited while on warning.
 - Concerns related to accreditation standard II (Ethics & Integrity): “a climate that fosters respect among students, faculty, staff, & administration from a range of diverse backgrounds, ideas, & perspectives” as well as compliance with all applicable government laws & regulations, including current investigations
- NEXT: Monitoring report due in November followed by site visit, & status consideration in March '26

Harvard developments

- Remember: May 22 SEVP revocation & TRO, June 4 proclamation & temporary injunction
- NEW:
 - June 23: Preliminary injunction pausing enforcement of presidential proclamation
 - June 30: Joint task force finding that the university acted with deliberate indifference toward discrimination & harassment against Jewish & Israeli students
 - Found deliberate indifference through lack of clear & consistent policy, processes, & delays
 - Jewish students report experiencing negative bias, discrimination, feeling physically unsafe, assaults
 - Images & vandalism
 - Demonstrations & resulting student discipline
 - Harvard's reply: "The administrative record does not document any meaningful investigation by the Government into antisemitism on Harvard's campus"
 - July 9: DoE and Health & Human Services OCR notify accreditor of violation
 - New England Commission of Higher Education (NECHE): "In all cases, the Commission will give appropriate consideration to significant accreditation- related information revealed..."

- Remember: Board of Visitors voted to dissolve DEI efforts in March. 7 DoJ letters to U of V beginning in April.
- NEW:
 - 6/16 & 6/17 letters from Assistant Attorney General & U of V law school alumna, Harmeet Dhillon: “Time is running short, & the Department's patience is wearing thin.”
 - June 27: President Jim Ryan steps down

Grant assurances process

- Remember:
 - Assurance of Compliance form required to receive federal funds
 - January EOs & Office of Management and Budget (OMB) memo limiting & pausing federal funding
 - June 11: New required language in 52.242-15 Stop-Work Order & .249-2 Termination for Convenience of the Government to allow federal government greater flexibility in grant termination
 - April: *American Public Health Association v. National Institutes of Health* suit to restore funds
- NEW:
 - June 12: NIH Rescission of Civil Rights Term and Condition of Award “waiting further Federal-wide guidance”
 - June 24: Motions for stay denied in *APHA v. NIH*
- NEXT: See webinar in February 2026

Indirect cost reimbursement rate cap

- June 20: District Court granted summary judgment in *ACU v. NSF* invalidating as “arbitrary, capricious, and contrary to law” the 15% indirect cost rate
- June 17: A different District Court issued a TRO in *AAU v. DoD*
- July 10: Associations recommend FAIR (Financial Accountability in Research) model as alternative for indirect costs
 - Direct costs (research performance costs) +
 - Indirect costs:
 - General research operations (onboarding, payroll, benefits)
 - Essential research performance support (regulatory compliance, award monitoring/oversight, research info services, facilities costs)
 - OR – Base option (less accounting, but less payout)

Transgender Athletes:

U.S. v. Skrametti - U.S. Sup. Ct. June 18, 2025

- Remember: Initiated as a 2023 ACLU suit to block Tennessee's ban on gender-affirming care for minors. Biden Administration argued Equal Protection under the 14th amendment
- NEW, June 18:
 - SCOTUS upheld ban
 - Declined to apply *Bostock* reasoning without assessing if that rationale is Title VII specific
 - Unlike *Bostock*, sex or transgender status are not a “but-for” cause as the diagnosis may not automatically change with one's sex. Therefore, not subject to strict scrutiny
 - Satisfied rational basis review which only requires “plausible reasons”

Transgender Athletes: U of Pennsylvania resolution agreement

- Remember: Investigation launched 2/6 due to a transgender athlete's participation on women's swimming team in the 2021-2022 season; resulted in a 4/28 in violation finding press release.
- NEW, 7/1 agreed to OCR's resolution agreement including:
 - Public statement, apology, notification to athletes & staff
 - Policy changes & adoption of "biology-based definitions"
 - Reallocation of swimming records & titles

Transgender Athletes:

No resolution agreement in California

- Remember, June 18: SCOTUS decision in *Skrmetti*
- NEW, June 25:
 - OCR found California Department of Education (CDE) & the California Interscholastic Federation (CIF)
 - Only 10 days to sign proposed Resolution Agreement which includes
 - Policy changes & adoption of “biology-based definitions”
 - Public statement, apology, notification to athletes & staff
 - Reallocation of individual titles & awards
 - Annual certification & monitoring plan
 - Cited to *Skrmetti* and the department’s interpretation that SCTOUS “acknowledged that a person’s identification as ‘transgender’ is distinct from a person’s ‘biological sex’.”
- July 7: CDE “respectfully disagrees with OCR’s analysis, and will not sign the Proposed Resolution Agreement”
- July 9: DoJ filed suit to enforce

Transgender athletes:

SCOTUS grants certiorari for 2 cases

- NEW: Idaho & Virginia seeking to uphold state laws barring transgender students from participating on women's sports teams granted certiorari by the supreme court
 - *Hecox v. Little* (9th Cir., 2024)
 - *B.P.J. v. West Virginia* (4th Cir., 2024)
- Next: Arguments likely to be in the fall, a decision not likely until 2026

Also, in California, in Title VII

- NEW, June 26: Letter to University of California President: DoJ is opening an investigation of violations of Title VII of the Civil Rights Act of 1964
 - Potential “race- and sex-based discrimination in university employment practices”
 - Cites 2030 Capacity Plan which includes “Reflecting California’s Racial/Ethnic Diversity” as a keyway to address the state’s needs
 - DoJ’s read of the plan is that is “directs its campuses to hire “diverse” faculty members to meet "race- and sex-based employment quotas”
 - The plan mentions hiring:
 - Advancing Faculty Diversity program pilots programs to "increas[e] faculty diversity and improv[e] academic climate and faculty retention" (14)
 - “[C]luster hires with a focus on disciplinary areas that will attract applicants from many backgrounds” (23)
 - "Advancing diversity is a key focus in the capacity plan... [including] ways to hire diverse faculty"(35)

George Mason Title VI Investigation

- Remember, July 1: Title VI shared ancestry investigation regarding a “pervasively hostile environment for Jewish students & faculty” investigation
- NEW, July 10: OCR opened investigation for alleged Title VI violations
- GMU reportedly created a racially hostile environment by using race & other immutable characteristics in university policies, including hiring & promotion. Noting specific policies & practices:
 - “Equity Advisors in every academic department”
 - Presidential directive to “recognize the invisible & uncredited emotional labor that people of color expend to learn, teach, discover, & work on campus” in RPT processes
 - Task Force & college/school level implementation of Anti-Racism & Inclusive Excellence (ARIE)

Nation-wide injunctions limited

- Remember: EO# 14160 challenged by *Trump v. CASA, Inc.* regarding birthright citizenship
- NEW: June 27, SCOTUS in a 6-3 decision, limits federal judge's ability to issue "universal" (read: nation-wide) injunctions
- NEXT:
 - Injunctions are restricted to no "broader than necessary to provide complete relief to each plaintiff"
 - Amended complaint, motion for class action certification, and motion for TRO/PI already filed

Upcoming Events



- July 28, 12:00 ET – How the OBBB and the Ohio Biennial Budget Bill Will Impact Higher Ed
- Our free Higher Ed Law webinar series will be posted in the next week or so
- Our free Title IX in Focus webinar series has been posted for next year! Go to www.brickergraydon.com/t9if
- Our Level 2 Title IX Training series starts July 22nd (not free, but cost effective!)

Register for these & other trainings at www.brickergraydon.com/events.

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