

What You Missed This Summer: Higher Ed August 14, 2025

Disclaimer

- We are not giving you legal advice. Consult with your legal counsel regarding how best to address a specific situation.
- Use chat function to ask general questions and hypotheticals.
- We have a variety of stakeholders here, so keep that in mind.
- If you registered using your email, you will get a copy of the slides. Watch for “Thank You For Attending” email.
- We are also recording today, and a link will be in the same email. We will only keep the recording up for seven days.

Format for Today's Presentation

- We can't possibly catch you up on every detail of this past summer, as it was brisk.
- We will, however, hit the biggest issues, as well as anything that has cropped up since our last free Federal Update Webinar (which we hold about every three weeks or so)
- Each topic will have an associated “to do” or “to don't” so that you can evaluate what you need to be doing on your campus.

Resources

- If you're interested in any of the resources we discuss today, follow any of us on LinkedIn and we'll post something that has the links!
- Today's speakers:
 - Eric Butler
 - Melissa Carleton
 - Jessica Galanos
 - Kasey Havekost
 - Rebecca Joseph
 - Liam McMillin
 - Kylie Stryffeler

Today's Agenda

- Federal Enforcement Strategy - Overview
- Title IX
- Title VI and the DOJ Memo
- One Big Beautiful Bill
- Stop Campus Hazing Act
- "Save College Sports" Executive Order
- Harvard litigation update

Federal Enforcement Strategy - Overview

- Act now and worry about legalities later
- Opening investigations against the same institution through multiple agencies and using multiple pathways
- Grant assurance requirements and the False Claims Act
- Settlement/resolution offers – cash component

Title IX Updates

- Ed recognizes June as "Title IX Month"
 - "June will now be dedicated to commemorating women and celebrating their struggle for, and achievement of, equal educational opportunity."
- June 2 – announced directed investigations related to allowing men to join/live in female-only intimate and communal spaces
 - University of Wyoming
 - Kappa Kappa Gamma sorority
 - Pending litigation against the sorority by members
 - Jefferson County Public Schools (Colorado)
- Penn Resolution Agreement
 - Public statement - "will adopt biology-based definitions for the words 'male' and female" per Title IX and EO
 - Removed individual records of former Penn swimmer Lia Thomas
 - Restoration of frozen federal funding

Title IX To Do List

- ✓ Review policies related to transgender student participation in athletics
- ✓ Work with legal counsel to assess risks
- ✓ Work with institutional leadership to assess your institution's ethic of care

Things to remember:

- ✓ Don't forget about relevant state law obligations
- ✓ Don't make decisions without seeking advise from legal counsel (in a privileged setting)
- ✓ Don't forget about potential impacts to enrollment and retention

DOJ Title VI Guidance (July 29)

- Facially neutral criteria ("cultural competence," "lived experience," and geographic targeting) that **function as proxies** for a protected class is unlawful **if designed or applied** for the purpose of creating an advantage/disadvantage based on a protected class.
- Examples of Potentially Unlawful Practices:
 - Race-based scholarships or programs - "any race-exclusive opportunities, such as internships, mentorship programs, or leadership initiatives that **reserve spots for specific racial groups...**"
 - Preferential hiring/promotion practices – Prioritizing candidates from underrepresented groups and bypassing qualified candidates who do not belong to those groups

DOJ Title VI Guidance (2)

- Examples of Potentially Unlawful Practices:
 - Access to facilities or resources – Designated safe spaces or lounges exclusively for students of a specific racial or ethnic group
 - Race based training sessions – segregated trainings based on race-based groups
 - Spaces segregated in name but not function
 - "BIPOC-only study lounge" facially discourages access by students of other races, even if access is technically open to all.
 - "Identity-based focus creates a perception of segregation and may foster a hostile environment"
 - Use of "diverse slate" practices – requiring a minimum number of candidates from specific racial groups or requiring a certain percentage of the candidate pool to be from "diverse backgrounds"
 - Supplier/Vendor Diversity Initiatives – prioritizing selection of women-owned businesses or minority-owned businesses could disadvantage "equally or more qualified businesses without preferred group status."

DOJ Title VI Guidance (3)

- Best Practices:
 - Ensure inclusive access - "open to all"
 - Focus on skills and qualifications – selection criteria should be "specific" and "measurable," directly related to job performance or program participation
 - "Rather than asking about 'cultural competence,' assess specific skills such as language proficiency or relevant educational credentials."
 - Socioeconomic status, first-generation status, or geographic diversity cannot be used as a proxy for racial or sex-based preferences
 - Prohibit demographic-driven criteria - "Use universally applicable criteria, such as academic merit or financial hardship, applied without regard to protected characteristics or demographic goals."
 - Document legitimate rationales
 - Scrutinize neutral criteria for proxy effects

DOJ Title VI Guidance (4)

- Best Practices:
 - Eliminate diversity quotas
 - Avoid exclusionary training programs
 - Include nondiscrimination clauses in contracts to third-parties
 - Establish clear anti-retaliation procedures and reporting mechanisms

DOJ Notice of Findings – GWU (Aug 12)

- DOJ investigation into "incidents of antisemitic discrimination and harassment of Jewish and Israeli students."
- Found GWU acted with Deliberate Indifference to "the complaints it received, the misconduct that occurred, and the harms that were suffered by its students and faculty..."
- Offered GWU the opportunity for voluntary resolution by agreement
- Notice states that GWU received "no less than eight complaints" between April 25 and May 1, 2024, of discrimination against Jewish and Israeli students.
- "Based on its investigation, the Department has concluded that GWU took no meaningful action and instead was deliberately indifferent..."

Deliberate Indifference Standard

- Actual vs Constructive Notice
 - DOE/DOJ Guidance: Institutions can have either actual or constructive notice to trigger Title VI Obligations
 - However, "Title VI only recognizes actual notice of harassment...to be held civilly liable for [a school district's] deliberate indifference..." (T.E. v Pine Bush Central School Dist (S.D. NY 2014).
- Pine Bush case (school district):
 - A finding of civil liability must show that that the Districts response to TVI harassment was "so clearly unreasonable in light of the known circumstances as to give rise to a reasonable inference that the defendant himself intended for the discrimination to occur."
 - In District Court's analysis of the Summary Judgment motion, found that there were genuine issues of material fact as to which incidents of which the school district had actual knowledge
 - Court highlighted testimony from a student that there was anti-Semitic graffiti, including swastikas, that was "so ubiquitous" that "it would be impossible for [teachers and administrators] to miss the swastikas." Found that this was sufficient to create a factual dispute as to actual knowledge.

Deliberate Indifference Standard (2)

- DOJ GWU Notice cites to Pine Bush case: Some factors to consider...
 - Allegations that the harassment was "systemic"
 - Disciplinary action against one student failed to deter others from harassing the plaintiff
 - "Taunting and other hallway harassment" persisted
 - Harassment "grew increasingly severe"
 - Increased violence
 - Threats of violence or death
 - Necessitated the use of protection orders/restraining orders
 - Timing of the intervention programs relative to when the incidents occurred
 - Whether the district's steps only addressed harassment toward some, but not all, of the plaintiffs

Title VI To-Do List

- Assess campus programs that appear (in name or function) to offer preference to race, color, or national origin.
 - Under privilege.
- Review your policies and procedures for receiving and investigating reports that trigger Title VI obligations.
 - Educate the campus community on the policy and procedures, so that folks know how and where to report.

"One Big Beautiful Bill"

OBBB passed on July 4, 2025

Key Higher Education Provisions:

- Changes to Student Lending and Aid
- Grad Earnings Accountability
- Endowment Tax

Changes to Student Lending (1 of 3)

Repayment Plans

- Only two plans available:

Standard Repayment Plan	Repayment Assistance Plan
<ul style="list-style-type: none"> • 10-25 yrs. (based on amount borrowed) • Fixed monthly payments & terms 	<ul style="list-style-type: none"> • Calculated by adjusted gross income and number of dependents. • \$10/month minimum payment. • No financial hardship requirement.

- Transition requirements:
 - Borrowers with new loans on or after July 1, 2026 can only enroll one of these
 - Currently on income contingent plans (ICR, PAYE, REPAYE, or SAVE) must transition to RAP before July 1, 2028.

Changes to Student Lending (2 of 3)

Loan Caps

- \$257,500 borrowing cap for students on all federal loans
- Parent PLUS loans now capped at \$20,000/year and \$65,000/dependent

Graduate Student Loans

- Grad PLUS loans eliminated July 1, 2026.
- Graduate loan caps:
 - Graduate Students: \$20,500 annually | \$100k aggregate
 - Professional Students: \$50,000 annually | \$200k aggregate

Changes to Student Lending (3 of 3)

Pell Grants

- Students who receive grants or scholarships that covering their entire cost of attendance (COA) ineligible to receive a Pell Grant, even if otherwise eligible for the program.
- Foreign income is included in the income calculation for Pell Grant eligibility.
- Students may not receive Pell Grants if their Student Aid Index (SAI) is more than double the maximum Pell Grant award.
- Pell eligibility extended to short-term programs through "accredited providers" in new Workforce Pell program provided they meet other federal and state requirements
- \$10 billion to eliminate the Pell shortfall for the FY26 year

Grad Earnings Accountability (1 of 2)

- "[A]n institution of higher education . . . shall not use funds under [Title IV] for student enrollment in an **educational program** offered by the institution... if the program awards an undergraduate degree, graduate or professional degree, or graduate certificate, for which the median earnings(as determined by the Secretary) of the **programmatic cohort** of students who received funds under this title [are] less than the median earnings of a **working adult** ..."
- What does this mean?

Grad Earnings Accountability (2 of 2)

- "Educational programs" evaluated based on their graduates' post-college earnings.
- Undergraduate programs:
 - median earnings of students who completed the program, four years after completion, who are working for 2 of the last 3 years ("programmatic cohort");
 - compared to median earnings of "working adults" with high school degree or GED.
 - Working adults: Age 25 to 34 & not enrolled in an institution of higher education.
 - Median earnings are based on data from the Bureau of the Census.
 - By state or by national data
- Graduate programs compared to students with BA.
- Failure to meet:
 - Year 1: notice to the students enrolled in that program of the low earnings finding
 - Years 2-3: lose eligibility to participate in the Direct Loan Program. Can reapply after 2 years.
- Effective on 7/1/26.
- In addition to, not in place of gainful employment reporting due 9/30/25.

Endowment Tax (1 of 2)

- Applies to institutions who have:
 - 3,000+ "tuition-paying students";
 - within the preceding taxable year;
 - where 50% or more are in the U.S.; and,
 - **student adjusted endowment** is \$500K+

Student adjusted endowment =

$$\frac{(aggregate\ fair\ market\ value\ of\ assets - direct\ costs)}{number\ of\ students}$$

Student adjusted endowment	Rate
\$500K - \$750K	1.4%
\$750K - \$2M	4.0%
\$2M+	8.0%

Endowment Tax (2 of 2)

Clarification:

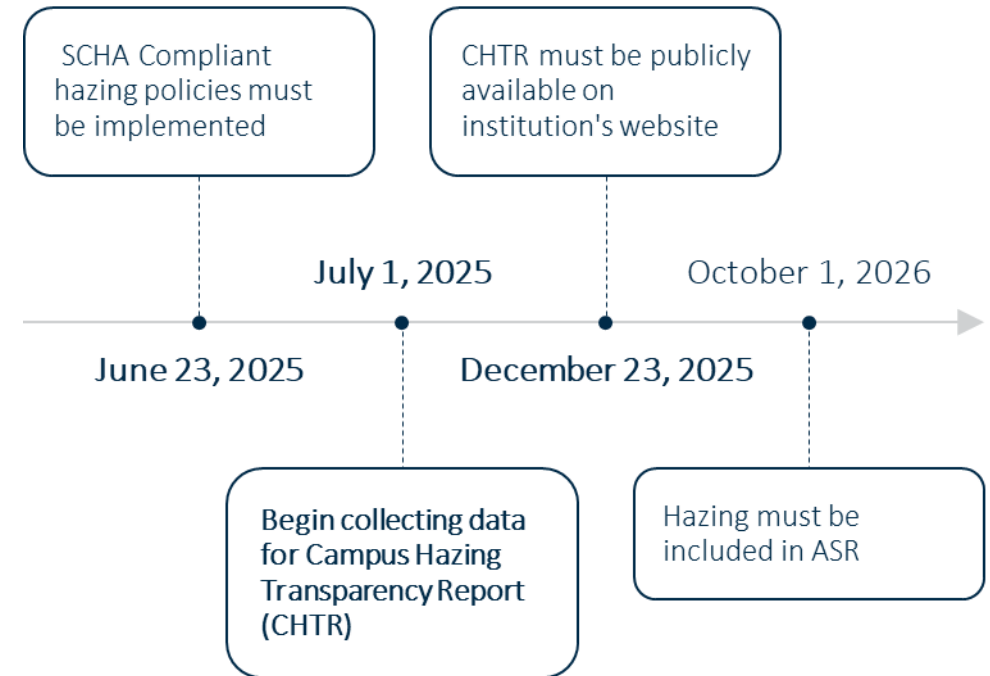
- Does *not* include public colleges and universities
- Student count *does* include international students.
- "Student adjusted endowment" looks at total *assets* to determine applicability and rate; but
- Tax is percentage of "net investment *income*."

OBBB To Do List

- ✓ Analyze financial impact on institution
 - Student lending
 - Endowment tax
 - Graduate earnings and "educational programs"
- ✓ Work with legal counsel to assess risks

Stop Campus Hazing Act – Reporting

- Hazing Policy 6/23/25
- Campus Hazing Transparency Report (CHTR) Data Collection Begins 7/1/25
 - Post publicly – 12/23/25 (then twice yearly thereafter)
 - Incident involving student orgs, where Hazing violation found, including dates investigation began, name of student org, description of finding (including alcohol/drug involvement), conclusions/sanctions, date student org informed of finding.



Stop Campus Hazing Act – To Do List

- ✓ Review current hazing policies and ensure compliant with SCHA
 - Work with counsel to address any state law conflicts
- ✓ Begin Collecting Data for the Campus Hazing Transparency Report

"Save College Sports" Executive Order

- Signed on July 24, 2025
- Aims to **preserve participation opportunities** in collegiate athletics, especially for **women's and non-revenue sports**
- Introduced in response to the *House* settlement, but does **not override** its terms
- Establishes expectations for **Title IX-compliant implementation** of the settlement
- Seeks to **mitigate roster limitations** imposed by the *House* settlement
 - Reduced opportunities in 13 men's sports and 8 women's sports
- Encourages institutions to **maximize roster spots** within existing caps.

Roster and Scholarship Directives

Tier One

Revenue over \$125M (most P4 schools)

Increase scholarships in non-revenue sports

Utilize full roster limits per *House* settlement

Tier Two

Revenue between \$50M and \$125M (most FBS schools)

Maintain scholarships in non-revenue sports

Utilize full roster limits per *House* settlement

Tier Three

Revenue under \$50M or those without revenue-generating sports (everyone else)

Prohibited from disproportionately cutting scholarships or roster spots based on a sport's revenue generation

Remember that compliance with Title IX remains important!
For athletic scholarships, required to have proportional distribution within a 1% margin of participation rates. For participation (roster limits), required to meet at least one prong of the three-prong test.

Other Directives in the EO

- Institutions must use **revenue-sharing funds** to preserve or expand scholarships and athletic opportunities
 - No mandated split of the \$20.5M - flexibility allowed as long as participation isn't reduced
- Prohibits **improper third-party pay-for-play** (e.g., booster/collective inducements), but legitimate ("fair market value") NIL deals still allowed
- Tasks the National Labor Relations Board (NLRB) with clarifying the **legal status of collegiate athletes** through guidance, rules, or other actions to support this effort.
- Tasks the AG and the Chairman of the FTC to stabilize and preserve college athletics by addressing **anti-trust challenges**

Litigation Update: Title IX Athletics

- *Myers et al v. Stephen F. Austin State University* 9:25-cv-00187 (E.D. Tex.)
 - Facts: In May 2025, SFA announced that they were eliminating women's beach volleyball, men's and women's golf, and women's bowling
 - Plaintiffs, student-athletes on those teams, argued that SFA's actions violated Title IX because SFA was not providing equitable athletic participation opportunities to females (the three prong test).
 - SFA argued that the three prong test was guidance and should not be followed in light of Loper Bright, and even if they had to comply with the three prong test, they complied with prong one (counting the cheer and dance team) or prong three (no interest in bowling and BV, but did not conduct an interest survey).
 - On August 1, 2025, the judge ruled at the preliminary injunction stage, after a hearing, that SFA must reinstate the three women's programs
 - Judge rejected SFA's argument that the recent Supreme Court decision invalidated Title IX policy interpretations and guidance.
 - SFA has appealed and filed a motion to stay the order

"Save College Sports" EO – To Do List

- ✓ If implementing the House settlement, athletics department should engage legal counsel early and regularly to ensure all decisions affecting scholarships and participation are reviewed for Title IX compliance
 - As seen in SFA litigation, budget constraints and revenue-sharing pressures were ruled not a valid reason to cut women's sports
- ✓ Confirm proportionality in athletic financial aid and participation opportunities and develop or update your Title IX Gender Equity Plan accordingly
- ✓ Follow federal legislation on this issue (SCORE Act)

Harvard Litigation Update (funding)

- April 18: NYT reports that April 11 demand letter was meant to be a draft, and was still being vetted by government officials.
 - Transmitted to Harvard by mistake.
 - Administration accused Harvard lawyers of "malpractice" for not confirming validity of the letter.
- Freeze of \$2.2 billion in federal grants and contracts in response to Harvard's rejection of demands.
 - Harvard sued in federal court
 - Cross motions for summary judgment heard on July 21, 2025
- Settlement negotiations ongoing
 - NYT reported Harvard may pay \$500 million settlement in exchange for federal research funding
 - \$\$ would go to vocational and educational programs and research instead of the gov't
 - Harvard has declined to comment

Harvard Litigation Update (enrollment of international students)

- **May 22, 2025:** Announcement that Harvard's Student and Exchange Visitor Program (SEVP) certification had been revoked
- Federal court temporarily enjoined the revocation the next day
- Litigation is ongoing

Harvard Litigation To Do List

- ✓ Keep an eye on the cases
 - If summary judgment is decided by the court, it could have significant consequences
 - If a settlement agreement is reached, the terms of that settlement may be different than other settlements with Columbia and Brown
- ✓ Continue to work towards Title VI compliance
- ✓ Identify federal grants and be prepared
- ✓ Tabletop scenarios related to international student enrollment on your campus

Upcoming Free Webinars

August 28	1:00 ET	Trauma-Informed Intakes (Title IX in Focus)
Sept. 12	12:00 ET	Title VI Update
Sept. 25	12:00 ET	FERPA Refresher for Higher Ed
Sept. 25	1:00 ET	Working with Advisors in the Title IX Process (Title IX in Focus)
Oct. 15	12:00 ET	Campus Compliance: Employment Law in Higher Ed
Oct. 30	1:00 ET	Weighing the Evidence in Sexual Violence Cases (Title IX in Focus)
Nov. 20	1:00 ET	Title IX Litigation Update (Title IX in Focus)

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