

# Title VI Update

Sept. 12, 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.

# Agenda

---

- Guidance Updates
- Federal Agency Enforcement Efforts
- Harvard Update
- Title VI Litigation

# Guidance Updates

# January & February 2025

---

- January 20, 2025: Executive Order: "Ending Radical and Wasteful Government DEI Programs and Preferencing"
- January 21, 2025, Executive Order "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" required joint guidance from ED and Attorney General within 120 days
- February 5, 2025 Memo from the DOJ on DEI
- Feb. 14, 2025 Dear Colleague Letter - "Title VI of the Civil Rights Act in Light of *Students for Fair Admissions v. Harvard*"
- February 28, 2025/March 1, 2025 – FAQs on the DCL

# National Education Association, et Al. V. U.S. Dep't of Ed.

---



Plaintiffs moved for preliminary injunction and on April 24, 2025, Defendants **enjoined** from enforcing and/or implementing:

1. the Dear Colleague Letter issued on February 14, 2025,
2. the February 28, 2025 “Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act,”
3. the End DEI Portal, and the April 3, 2025 certification requirement,

# DOJ Title VI Guidance (July 29, 2025)

---

- Guidance For Recipients of Federal Funding Regarding Unlawful Discrimination
- 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

# Federal Enforcement Efforts

# Columbia & Brown

---

- Columbia (July 23, 2025) - [Columbia University Resolution Agreement.pdf](#)
  - \$200 million settlement with US
  - \$21 million settlement with EEOC to cover claims of individual employees based on discrimination or harassment experienced since Oct. 7, 2025
  - [Resolution Agreement Frequently Asked Questions | Office of the President](#)
- Brown
  - Secretary McMahon Statement on Brown University Deal
  - “Brown has committed to proactive measures to protect Jewish students and combat Antisemitism on campus. Women’s sports and intimate facilities will be protected for women and Title IX will be enforced as it was intended.”

# George Washington University

## DOJ Notice of Findings (Aug. 12, 2025)

---

- 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 (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

# University of California-Los Angeles

## DOJ Notice of Findings (July 29, 2025)

---

- DOJ investigated UC's "response to incidents of antisemitic discrimination, harassment, abuse, and retaliation against students that occurred within the educational environment of the UC System."
- "The Department's investigation of the greater UC System remains ongoing. However, for the reasons discussed below, the Department has concluded that UCLA's response to the protest encampment on its campus in the spring of 2024 was deliberately indifferent to a hostile environment for Jewish and Israeli students in violation of the Equal Protection Clause and Title VI."

## DOJ Notice of Findings (2)

---

- July 30, 2025 – UCLA received notice that federal government was suspending \$548 million in research grants
- Reports indicate Trump administration is seeking \$1 billion settlement
- Lawsuit filed in June 2025 by Univ. of California researchers whose previously approved grants were terminated or suspended (*Thakur et al. v. Trump*)
  - Preliminary injunction granted June 23, 2025
  - On Aug. 12, Judge ruled National Science Foundation form letter funding cuts dated July 30, 2025 and Aug. 1, 2025 violated the preliminary injunction
  - Order does not apply to funding suspended by NIH and Dept. of Energy



# George Mason University

## OCR Notice of Findings (Aug. 22, 2025)

---

- U.S. Department of Education's Office for Civil Rights Finds George Mason University Has Violated Title VI (Aug. 22, 2025)
  - Investigation initiated July 10, 2025
  - OCR determined "the University violated Title VI by illegally using race and other immutable characteristics in university practices and policies, including hiring and promotion."
- August 1, 2025 – Board of Visitors passed a resolution prohibiting diversity, equity, and inclusion efforts at the university

# Duke University Title VI Investigation Initiated (July 28, 2025)

- U.S. Department of Education Initiates Investigation into Duke University and Duke Law Journal for allegedly violating Title VI by using race, color, and/or national origin to select law journal members (July 28, 2025)
- Separately, U.S. Secretary of Education and U.S. Secretary of Health and Human Services sent a joint letter to Duke University leadership outlining shared concerns about the use of race preferences in Duke’s hiring, admissions, and scholarship decisions.
  - The letter requests that Duke “review all policies and practices at Duke Health for the illegal use of race preferences, take immediate action to reform all of those that unlawfully take account of race or ethnicity to bestow benefits or advantages, and provide clear and verifiable assurances to the government that Duke’s new policies will be implemented faithfully going forward—including by making all necessary organizational, leadership, and personnel changes to ensure the necessary reforms will be durable.”

# Investigations – Haverford College

---

- U.S. Department of Education Initiates Title VI Investigation into Haverford College for Allegedly Tolerating Anti-Semitic Harassment (Aug. 20, 2025)
  - <https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-title-vi-investigation-haverford-college-allegedly-tolerating-anti-semitic-harassment>

**Harvard**

# Joint Task Force to Combat Anti-Semitism – Harvard

- April 11, 2025- ED, HHS, and GSA send joint letter to Harvard demanding changes across the institution, with the government to exercise oversight.
  - This is the same Joint Task Force that investigated Columbia
- April 14, 2025- Harvard refused to comply with demands but remained open to discussing improvements.
- April 14, 2025- General Services Administration and ED announced that they would freeze \$2.2 billion in multi-year grants and \$60 million in multi-year contract value to Harvard.
- May 6 – ED says no new research grants unless it complies with ED demands
- May 2025– Eight agencies announce termination of approximately \$450 million in grants (in addition to the \$2.2 Billion).

# Harvard Status Update

---

- Harvard brought suit against federal agencies challenging that decision on first amendment grounds (retaliation and content/viewpoint burdens), procedural grounds, and arbitrary/capricious grounds.
- September 3, 2025 - [Motion for Summary Judgment granted in part as to Counts I and IV.](#)
  - Federal Gov't is enjoined from "Issuing any other termination, fund freezes, stop work orders, or otherwise withholding payment on existing grants or other federal funding, or refusing to award future grants, contracts, or other federal funding to Harvard in retaliation for the exercise of its First Amendment rights, or on any purported grounds of discrimination without compliance with the terms of Title VI"

# Harvard SEVP Certification

---

- 5/22/25 - Department of Homeland Security announced it would revoke the Student Exchange Visitor Program Certification – preventing "any aliens on F- or J- nonimmigrant status" and "existing aliens on F- or J- nonimmigrant status must transfer to another university in order to maintain their non-immigrant status."
- Harvard responded on 5/23/25 by filing a complaint in the District of Massachusetts
- Current status:
  - Orders from June 2025 allow Harvard to continue to enroll international students.
  - [July 23, 2025](#) – Department of State launching investigation into "Harvard University's continued eligibility as a sponsor for the Exchange Visitor Program."

# Litigation Update



# Race-Conscious Admissions Policy

*Students for Fair Admission v. Univ. of Texas at Austin*, 142 F.4th 819 (July 11, 2025)

---

- Following the Supreme Court's decision in *Students for Fair Admissions v. Harvard* (2023), UT revised its admissions policy:
  - Removed check-box racial data from applicant's file before review
  - Removed race and ethnicity from its holistic review rubric
  - Admissions officers trained on how to handle unsolicited disclosure of race or ethnicity
  - Instituted quality checks
- Admissions officers still had unrestricted access to applicants' racial check-box data and aggregate racial data during the decision-making process
- SFFA argued access to racial check-box data constitutes a *per se* violation of Equal Protection Clause and Title VI, or is a subterfuge for continuing race discrimination

# ***Students for Fair Admission v. Univ. of Texas at Austin***

## ***Slide 2 of 2***

---

- District court dismissed claims as moot
- On appeal, Fifth Circuit ruled that claims related to University's pre-*Harvard* admissions policy are moot, but claims related to University's post-*Harvard* policy NOT moot
  - SFFA seeks declaratory relief that University's revised admissions procedures are still unlawful
  - SSFA requests a permanent injunction prohibiting anyone in UT's admissions office from receiving or having access to racial check-box data or aggregate reports on race during the admissions process
  - UT admits that it is continuing those practices
  - SFFA therefore has not secured "all the relief [it] might have won" and maintains "a concrete interest" in the outcome of the litigation
- Case remanded

# University of California-Los Angeles (3 of 3)

## Lawsuit settlement (July 29, 2025)

---

- Consent Judgement and Permanent Injunction, and Settlement Agreement
- Settles claims stemming from protests in Spring 2024 that blocked Jewish students from accessing parts of campus
- University will pay a total of \$6.45 million
  - \$50,000 to each plaintiff
  - \$2.3 million for charitable contributions to combat antisemitism

*Frankel et al v. Regents of The University of California et al.* (C.D. Cal., No. 2:24-cv-04702)

# Relocation of pro-Israel event

*Young America's Foundation v. Block*, No. 2:24-cv-08507 (C.D. Cal. Aug. 11, 2025)

---

- YAF sued UCLA officials for First Amendment violations after University changed the location of a talk by Robert Spencer titled “Everything You Know About Palestine Is Wrong” at the last minute
- Ruling on motion to dismiss:
  - Viewpoint discrimination – YAF alleged university officials treated anti-Israel activities more favorably, and that University’s security justification was pretextual
  - Court granted MTD in favor of University
    - YAF did not plausibly allege relocated event because officials held anti-Israel views
    - YAF did not plausibly allege security-driven rationale was pretext
    - Allegations in complaint support officials’ reason for relocating event – YAF requested security, anti-Israel activists made specific threats the night before the event, past actions by anti-Israel activists support seriousness of threats

# Relocation of pro-Israel event (2 of 3)

- Heckler's veto:
  - "A 'heckler's veto' is an impermissible content-based speech restriction where the speaker is silenced due to an anticipated disorderly or violent reaction of the audience." *United States v. Rundo*, 990 F.3d 709, 719 (9th Cir. 2021).
- Student Union is a limited public forum - "Rather, "[i]n limited public forums, content-based restrictions are permissible, as long as they are **reasonable and viewpoint neutral**." *Amalgamated Transit Union Loc. 1015 v. Spokane Transit Auth.*, 929 F.3d 643, 650–51 (9th Cir. 2019)."
- "[T]he First Amendment does not impose a duty on public universities to take reasonable action to protect speakers from hecklers in limited public fora."
  - "Even if it did, Plaintiffs have not cited a single case showing that this right was 'clearly established' at the time of the alleged violation."
  - University officials entitled to qualified immunity

# Relocation of pro-Israel event (3 of 3)

---

- § 1983 facial challenge to interim policy – MTD **denied**
- Alleges policy is unconstitutionally vague and overbroad and gives government officials broad discretion to decide what speech is allowed
  - Defines “Major Events” as those likely to significantly affect campus safety or services; grants discretion to the Chancellor and UCLA Police Department to impose security measures; security measures include venue changes, additional law enforcement, ticketing, and buffer zones; updated version includes an annual cap on security spending to address threats against major events
- Court concluded policy’s definition of major event was definite and objective
- Security measures discretion – Plaintiffs plausibly alleged policy is not sufficiently objective and definite for determining what security measures to recommend

# Deliberate Indifference

*Landau v. Corporation of Haverford College* (E.D. Pa., June 30, 2025)(1 of 3)

---

- Over 50 Jewish students and faculty sued College for hostile educational environment in violation of Title VI of the Civil Rights Act and breach of contract
- Ruling on motion to dismiss for failure to state a claim
- Title VI Claim hostile environment claim dismissed
  1. Several allegations involve protected political expression
    - A lecture criticizing Israel directed at the general public
    - A student handing out Palestinian flags at campus gathering (peaceful distribution of political materials is a standard method of political expression directed at the public)
    - a student organization's expressed mission directed at entire college campus was not a genuine threat targeting Jewish people – beyond the mission statement that organization supported liberation of Palestine “by all means necessary,” no additional context suggested language was intended to instill fear
    - Social media posts concerned the State of Israel, not people of Jewish descent, and posts were protected political speech on a matter of public concern

# Deliberate Indifference (2 of 3)

- Title VI Claim hostile environment claim dismissed, cont.
  2. Deliberate indifference
    - One-week sit-in protest at administrative office – Protest was peaceful, and President feared worse behavior if she intervened; her decision to let protest run its course was reasonable and Plaintiffs did not allege protest caused them material harm (students were not unable to get to classes, no classes were disrupted)
    - Spring 2024 three-day encampment on main college green – Plaintiffs did not allege any material impact on education or serious harm; given extreme unrest at other college campuses, decision to allow protestors to express themselves freely for three days not clearly unreasonable
    - Dean’s intervention when protestors interrupted anti-Semitism event demonstrated reasonable effort to quell the unrest
  3. Plaintiffs failed to allege any concrete deprivation of educational benefits – generalized discomfort is insufficient



# Deliberate Indifference (3 of 3)

---

- Breach of contract claim allowed to proceed to discovery
  - Plaintiffs alleged they filed reports through the College's bias incident portal but did not receive any response in violation of College's Bias Policy
  - Court ruled Plaintiffs plausibly alleged College violated clear contractual promise to conduct an inquiry and address all reports of bias incidents
  - While Plaintiffs did not demonstrate harm resulting from the contract breach, nominal damages are available under Pennsylvania law

# Hostile Environment

*Yakoby v. Trustees of Univ. of Pennsylvania*, No. 23-4789 (E.D. Pa., June 2, 2025)

---

- Jewish students and Students Against Antisemitism (SAA) sued University, alleging University tolerated and facilitated antisemitic incidents on campus following the October 2023 attack on Israel
- Court granted University's motion to dismiss, but permitted Plaintiffs to amend the complaint as to the Title VI and breach of contract claims
  - Students and SAA did not plead any facts showing either intentional discrimination or deliberate indifference by University
  - At worst, Plaintiffs accuse University of tolerating and permitting expressions of viewpoint which differ from their own, and the complaint acknowledges the University did respond to antisemitic incidents and has made efforts to redress them
    - University formulated and announced an Action Plan to Combat Antisemitism," created a Student Advisory Group and Task Force intended to address campus antisemitism, and formed a Presidential Commission on Countering Hate and Building Community

# Additional Updates

# Title VI Coordinators Mandated on All New York College Campuses

July 2025

---

- “By placing Title VI coordinators on all college campuses, New York is combating antisemitism and all forms of discrimination head-on,” Governor Hochul said. “No one should fear for their safety while trying to get an education. It’s my top priority to ensure every New York student feels safe at school, and I will continue to take action against campus discrimination and use every tool at my disposal to eliminate hate and bias from our school communities.”

# August 7, 2025 – Ensuring Transparency in Higher Education Admissions

---

- Aug. 7, 2025 Memorandum for the Secretary of Education- Ensuring Transparency in Higher Education Admissions  
<https://www.whitehouse.gov/presidential-actions/2025/08/ensuring-transparency-in-higher-education-admissions/>
- Aug. 7, 2025 - U.S. Secretary of Education Linda McMahon Directs National Center for Education Statistics to Collect Universities' Data on Race Discrimination in Admissions
  - Directs NECS to make changes during 2025-2026 school year
  - Department will collect disaggregated data by race and sex relating to the applicant pool, admitted cohort, and enrolled cohort at the undergraduate level, and for specific graduate and professional programs

# DOE Ends Funding to Discretionary Grant Programs at MSIs

September 10, 2025

---

- [U.S. Department of Education Ends Funding to Racially Discriminatory Discretionary Grant Programs at Minority-Serving Institutions | U.S. Department of Education](#)

# Upcoming Free Webinars

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)
Dec. 12	12:00 ET	Clery Hot Topics

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

# Thank You

