



Spring 2025 CLE Workshop · March 26 – 28, 2025

Higher Education Discrimination Law

Washington Update

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Turbulent Landscape

- Legislative Developments
- Executive Branch Actions
- Judicial Activity



The background features a stylized illustration of several people's heads and shoulders in profile, facing right. The colors are muted and earthy, including shades of green, brown, and red. The illustration is semi-transparent, allowing the white text to stand out prominently.

Legislative Developments

Appropriations

- Continuing Resolution until September 30th.
- Fiscal Year 2026 appropriations underway.
- Severe cuts to higher education programs expected.

Budget Reconciliation

- Two different paths for Senate and the House.
- Senate reconciliation instructions mandate \$1 billion in savings from the Senate HELP Committee.
- House reconciliation instructions mandate \$330 billion in savings from the House Education and Workforce Committee.
- Concerning policy proposals being considered.

Concerning Legislative Proposals

- H.R. 1048: DETERRENT Act
 - Debate yesterday, vote expected on Thursday
 - Expands reporting requirements under HEA Sec. 117 on foreign contracts and gifts to IHEs.
 - Current version requires disclosures of \$480 or more for faculty and institutions
 - Current version includes intellectual property under definition of contract and gift

Concerning Legislative Proposals

- S. 308 Graduate Opportunity and Affordable Loans Act (GOAL)
 - Terminates the ability of a graduate or professional student to receive a Direct PLUS Loan
 - Establishes the aggregate loan limit for Direct Unsubsidized Loans as \$65,000 for a graduate student (in addition to the amount borrowed for undergraduate education) and \$130,000 for a professional student (in addition to the amount borrowed for undergraduate education)

Concerning Legislative Proposals

- H.R. 1006 Higher Education Accountability Tax (HEAT) Act
 - Expands the current endowment excise tax from 1.4% to 10%.
 - Lowers threshold for universities subject to the tax from \$500k per student to \$250k per student.
 - Increases the tax rate to 20% for institutions increasing tuition by more than the rate of inflation.

Concerning Legislative Proposals

- Senator Cassidy announced last week he will introduce a bill to terminate the Department of Education, unknown as to how close the bill text will eschew to the Trump admin. EO on dismantling the department or timeline for introduction.



Executive Branch Actions

Executive Orders: Overall

- 24 executive orders related to higher education
 - DEI
 - Antisemitism/Title VI
 - Immigration
 - Title IX
 - Sustainability
 - Endowments
 - PSLF
 - Government Operations
 - Termination of ED

Executive Orders: DEI

- Ending Illegal Discrimination and Restoring Merit-Based Opportunity (01/21/2025)
- Ending Radical and Wasteful Government DEI Programs and Preferencing (01/20/2025)
- Initial Rescissions of Harmful Executive Orders and Actions (01/20/2025)

Executive Orders: Antisemitism/Title VI

- Additional Measures to Combat Anti-Semitism (01/29/2025)

Executive Orders: Immigration

- Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats (01/20/2025)
- America First Policy Directive to the Secretary of State (01/20/2025)
- Protecting the American People Against Invasion (01/20/2025)
- Ending Taxpayer Subsidization of Open Borders (02/19/2025)

Executive Orders: Title IX

- Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (01/20/2025)
- Keep Men out of Women's Sports (02/05/2025)

Executive Orders: Sustainability

- Initial Rescissions of Harmful Executive Orders and Actions (01/20/2025)

Executive Orders: Government Operations

- Reevaluating and Realigning United States Foreign Aid (01/20/2025)
- OMB Memo on Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs (01/29/2025)
- Unleashing Prosperity Through Deregulation (01/31/2025)
- Supplemental Guidance to the 2024 NIH Grants Policy Statement: Indirect Cost Rates (02/07/2025)
- Implementing DOGE Workforce Optimization Initiative (02/11/2025)

Executive Orders: Government Operations

- Keeping Education Accessible and Ending COVID-19 Vaccine Mandates in Schools (02/15/2025)
- Radical Transparency About Wasteful Spending (02/18/2025)
- Ensuring Lawful Governance and Implementing DOGE Deregulatory Initiative (02/19/2025)
- Implementing DOGE Cost Efficiency Initiatives (02/26/25)
- Continuing the Reduction of the Federal Bureaucracy (03/14/2025)
- Improving Education Outcomes by Empowering Parents, States, and Communities (03/20/2025)

Department of Education Activity: Overall

- Formation of antisemitism taskforce
- DEI Actions
- Institutional investigations
 - Title IX
 - Title VI
- Reduction in Force
- \$900 million in IES contracts and cancellation of restricted use NCES data.

Department of Education Activity: Antisemitism

- ED, DOJ, and HHS announce task force to combat antisemitism (02/03/2025)
- Initial investigation of five institutions (Columbia, Northwestern, Portland State, UC Berkeley, and Unv. of Minnesota, Twin Cities)
- ED, HHS, and GSA launch investigation of Columbia University
 - Initial consideration of Stop Work Orders for \$51.4 million and \$5 billion additional federal grant commitments (03/03/2025)
 - \$400 million cancelled in grants and contracts (03/07/2025)

Department of Education Activity: Antisemitism

- Initiative to address backlog of Biden Administration complaints regarding antisemitism (03/07/2025)
- Letters sent to 60 institutions under investigation for antisemitic discrimination and harassment (03/10/2025)

Department of Education Activity: DEI/Title IX

- Withdrawal of key offices and DEI efforts within ED.
- Investigations into San Jose State University volleyball program, Penn's swimming program, and MA Interscholastic Athletic Association.
- Cancellation of 10 contracts totaling \$336 million with Regional Educational Laboratories and Equity Assistance Centers.
- ED letter to institutions regarding DEI and SFFA decision.
- FAQ about racial preferences and stereotypes under Title IV.

Department of Education Activity: DEI/Title IX

- Investigations into 45 institutions citing their obligations to end the use of racial preferences and stereotypes in education programs and activities.
- \$175 million frozen to Penn citing policies allowing transgender athletes to compete in women's sports.
- Maine Department of Education found to be in violation of Title IX.

Department of Education Activity: Reduction in Force

- Initially 4,133 employees reduced to 2,183 employees
- Employees were offered voluntary resignation opportunities and retirement
- 259 employees accepted the Deferred Resignation Program
- 313 employees accepted the Voluntary Separation Incentive Payment.

The background of the slide features a series of overlapping, semi-transparent silhouettes of people's heads and shoulders in profile, facing right. The silhouettes are rendered in various colors including shades of green, red, orange, and brown, creating a diverse and inclusive visual. The overall image has a soft, slightly blurred quality.

Judicial Activity

Pending Litigation

- Today is Day 65 of the Second Trump Administration.
- Currently more than 100 lawsuits concerning actions taken by the Executive Branch.
- As of March 25th, 53 rulings have at least temporarily paused actions by the Trump administration since Inauguration Day.

Pending Litigation

- For our purposes, there are roughly 3 categories of impact:
 - Actions directly affecting higher education institutions, students, graduates.
 - Actions adjacent to but greatly impacting university work in conjunction with the federal agencies.
 - Actions encompassing higher ed along with general public.

Legal Challenges to the Elimination of the Department of Education

Overview:

- In March 2025, President Trump issued an executive order directing the elimination of the U.S. Department of Education, aiming to return control over education to the states.
- **Lawsuit:**
 - **Democracy Forward Foundation v. Trump Administration**
 - **Parties Involved:** Easthampton School District, Somerville Public School Committee, American Federation of Teachers (AFT) – Massachusetts, AFT, AFSCME Council 93, American Association of University Professors and Service Employees International Union (SEIU)
 - **Claims:** The lawsuit argues that the executive order is illegal without congressional approval and undermines the department's duties, such as managing the \$1.7 trillion student loan portfolio and overseeing civil rights investigations.
 - **Status:** Filed March 24, 2025; awaiting judicial review.
- **Implications for Universities:**
 - Potential disruption to federal education programs, including financial aid and civil rights enforcement.
 - Increased uncertainty and administrative challenges during the transition of responsibilities to state control.

Executive Orders Targeting Diversity, Equity, and Inclusion (DEI) Programs

Overview:

- The Trump administration issued executive orders restricting federal funding for Diversity, Equity, and Inclusion (DEI) initiatives, targeting programs that promote "divisive concepts."
- ***National Association of Diversity Officers in Higher Ed. v. Trump*** (D. Md.) Case No. 1:25-cv-00333-ABA
 - Status: On Mar. 14, the Fourth Circuit granted the government's petition for a stay of the preliminary injunction pending appeal. (Fourth Circuit Case No. 25-1189)
- **National Urban League v. Trump**

Federal Funding and Campus Policy Enforcement

- **NIH 15% Cap Litigation:**

- The Trump administration's imposition of a 15% cap on indirect costs (e.g., administrative expenses) for NIH research grants has led to lawsuits from research universities.
- Plaintiffs argue the cap undermines the ability to fund essential research infrastructure and violates administrative law procedures by circumventing proper rule-making processes.

- **Implication for Universities:**

- Heightened financial and legal vulnerability tied to federal oversight.
- Need to evaluate institutional policies to withstand federal scrutiny while preserving educational values.
- Importance of documenting compliance efforts to prepare for potential audits or investigations.
- Potential loss of critical research funding and increased operational costs due to the NIH cap.

Immigration Enforcement Actions Affecting Students

Overview:

- The Trump administration has intensified immigration enforcement, leading to legal actions involving university students.
- **Chung v. Trump Administration**
 - **Parties Involved:** Yunseo Chung, a Columbia University student and legal permanent resident
 - **Claims:** Chung was arrested during an anti-Israel protest and now faces deportation. The lawsuit alleges that the administration's actions are retaliatory and infringe upon her First Amendment rights.
 - **Status:** Filed in March 2025; awaiting court decision.
- **Implications for Universities:**
 - Increased concern for the safety and rights of international and immigrant students.
 - Need for institutions to provide legal support and guidance to students involved in activism.

A background graphic featuring the silhouettes of several diverse individuals in profile, facing right. The silhouettes are rendered in various colors including shades of green, orange, red, and brown, set against a light beige background. The word "Questions?" is overlaid in white text across the center of the image.

Questions?

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