



Federal Update for Higher Education

June 10, 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) 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... What has happened since May 14?

- Harvard and International Students
- Harvard and FERPA
- New case to watch on mass grant termination
- Los Angeles Protests
- House v. NCAA Settlement
- UNC Accreditation Movement
- Columbia Accreditation
- The future of Pell Grants
- Department of Education Title IX Month
- Department of Education RIF
- Department of Energy Title IX guidance

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- 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

- May 23, 2025 Complaint:
 - Harvard has "more than 7,000 visa holders" and has been SEVP certified for 70 years.
 - Complaint alleges violations of the First Amendment, the Due Process Clause, and the Administrative Procedures Act.
 - Harvard outlines a series of events calling the SEVP revocation a "culmination of its unprecedented and retaliatory attack on academic freedom"
 - Revocation of billions of dollars in federal funding.
 - Truth Social posts from the President "Harvard should lose its Tax-Exempt Status"
 - Demands to hire third parties to review the viewpoints of students, faculty, and staff, of departments, fields, or teaching units, to "refuse admission to international students 'hostile to American values'"

- May 23, 2025, TRO Granted
- The Government is enjoined from "implementing, instituting, maintaining, or giving effect to the revocation of [Harvard's] SEVP Certification" or "giving any force or effect to the Department of Homeland Security's May 22, 2025" notice of revocation.
- NEWS: [News from the Office of the President - Harvard University](#)

- **June 4, 2025: Enhancing National Security by Addressing Risks at Harvard University** (See also, Restricting the Entry of Foreign Nationals to Protect the United States...)
 - Accuses Harvard of failing to comply with civil rights laws.
 - Suggests that foreign nationals are contributing to increases in violent crime at Harvard.
 - States that Harvard has "repeatedly hosted and trained members of a Chinese Communist Party paramilitary organization."
 - Fails to discipline students who violate the law.
 - Failed to provide government with requested information.

- June 4, 2025: Enhancing National Security by Addressing Risks at Harvard University (continued)
 - Suspends entry of any alien into the U.S. to pursue course of study at Harvard for six months.
- June 5, 2025 – Harvard amended its May 23, 2025 complaint.
- June 6, 2025 - Proclamation Temporarily enjoined by D.Mass. (1:25-cv-11472-ADB).
- All Ivy League institutions signed amicus brief except for Columbia and Cornell.
- June 16, 2025 – Hearing on SEVP and Proclamation

- June 4, 2025: Enhancing National Security by Addressing Risks at Harvard University
 - Criticized Harvard for not providing information about foreign students' "known illegal activity," "known dangerous and violent activity," "known threats to other students or university personnel," "known deprivation of rights of other classmates or university personnel," and whether those activities "occurred on campus"
 - Does not appear to be any FERPA exception that would permit this disclosure; SEVP regulations require much narrower disclosures than what was requested

New Case to Watch

- *Thakur v. Trump*, Case No. 3:25-cv-04737 (N.D. Cal.)
 - Challenges mass termination of grants under a number of federal agencies
 - Brought by faculty of the University of California system
 - Hearing scheduled on TRO for June 20, 2025

Los Angeles Protests

- Protesters clashing with federal agencies over immigration enforcement activity.
- Executive branch has activated the national guard under Title 10 authority.

10 U.S.C. 12406: The President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws whenever:

- The country or states are "invaded, or in danger of invasion by a foreign nation"
- "rebellion, or danger of rebellion, against the authority of the Government of the United States"
- "the President is unable with the regular forces to execute the laws of the United States."

Los Angeles Protests (cont.)

Posse Comitatus Act (1878)

- Limits the federal government from using the military for ordinary law enforcement purposes.
 - Exception for the Insurrection Act, which allows the President to use the military when he determines that "unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings."

Current protests drawing comparisons to activation of the national guard on May 4, 1970 at Kent State University.

House v. NCAA Settlement

- Final settlement approved 6/6/2025
- All Division I programs will contribute to the \$2.8 billion settlement payment over the next 10 years.
- Eliminates caps on athletic scholarships.
- Imposes new roster caps.
- Revenue sharing and direct payments from schools to athletes for NIL.
 - Each institution can share up to \$20.5 million per year with athletes.
- Payments to be regulated by the newly-created College Sports Commission.

Accreditation: UNC

- Internal email obtained by Inside Higher Ed through public records requests.
- "the Florida Project" - to be a "single member Florida nonprofit corp"
 - Florida to be the sole member, with delegable powers to a Board of Directors made up of participating states"
- UNC officials reportedly had advance notice of the April 23 executive order on accreditation.
- Accreditor to focus on "the unique needs of public colleges and universities"

Accreditation: Columbia

- June 4, 2025 – OCR notifies Middle States Commission on Higher Education that Columbia University is in violation of federal antidiscrimination laws and therefore does not meet accreditation standards
 - Cites "Reforming Accreditation to Strengthen Higher Education", EO April 23, 2025, as requiring notification to accreditors of investigative findings under Title VI and Title IX
- June 6, 2025 – MSCHE issues a FAQ document
 - Columbia is still accredited. We have a process to follow before we can determine noncompliance, and institutions have up to 5 years to demonstrate compliance.
 - There was no deadline given, but OCR is already looking for a meeting

- "One Big Beautiful Bill" Act includes changes to administration of Pell Grants
 - Maximum Pell award of \$7,395 currently requires students to complete 24 credit hours per year
 - Bill would increase that number to 30 credits for the max award, and eliminate the award altogether for those who take less than 15 credits.
- Department of Ed also hopes to reduce the maximum award to \$5,710

Department of Ed: Title IX Month (1 of 3)

- Press release from ED, June 2, 2025:
- The U.S. Department of Education (the Department) today announced that it is recognizing June as ‘Title IX Month’ in honor of the fifty-third anniversary of Title IX of the Educational Amendments (1972) being signed into law. June will now be dedicated to commemorating women and celebrating their struggle for, and achievement of, equal educational opportunity.
- Announces two investigations

- Investigation: University of Wyoming
 - "[T]he University allowed a man [read: transgender woman] to join a campus sorority."
 - "A school receiving federal funding that supports, sponsors, or promotes a sorority or fraternity, must meet its obligations under Title IX to protect its students from sex-based harassment and sexual assault, regardless of the sorority or fraternity's policy. A sorority that admits male students is no longer a sorority by definition and thus loses the Title IX statutory exemption for a sorority's single-sex membership practices."

- What is that statutory exemption again?
 - Title IX does not apply to membership practices "of a social fraternity or social sorority which is exempt from taxation under [26 USC 501(a)], the active membership of which consists primarily of students in attendance at an institution of higher education" - 20 U.S.C. 1681(b)(6)(A)
- What is the definition of sorority?
 - There isn't one in the law.

Department of Education RIF



- D.Mass Judge Myong Joun blocked the administration's termination of over 2,000 Department of Education employees, ruling that it would functionally eliminate the work of the Department.
- First Circuit Court of Appeals affirmed.
- Administration filed petition for certiorari to SCOTUS

More to come...

Department of Energy Title IX Regs (1 of 3)

- "Nondiscrimination on the Basis of Sex in Sports Programs Arising Out of Federal Financial Assistance" - 90 Fed. Reg. 20786 (May 16, 2025)
- Issued May 16, 2025, Effective July 15, 2025
- Summary: "This DFR amends existing regulations requiring certain funding recipients that sponsor sports teams for members of one sex to allow members of the opposite sex to try out for the team. Accordingly, these requirements will no longer be a factor when recipients operate sports teams."
- Currently the Energy reg is the same as the Title IX reg... but...

- New language:

Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. [and then the regulation ends]

- Eliminated language:

However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

[See 5 CFR 1042.450]

Upcoming Events



- Our team will be at the NACUA conference in Seattle the week of June 23rd. We hope to see some of you there!
- Our Title IX in Focus free webinar series has been posted for next year! Go to www.brickergraydon.com/t9if

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