

Current Legal Issues in Higher Education

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Today

- Scope of Legal Issues at Your IHE
 - Origin of Legal Obligations
 - Review of Obligation Sources
 - IHE Resources and Engaging Counsel
- 2026 – Year of Major Changes in Higher Education
 - One Big Beautiful Bill Act
 - 2026 Changes and Recent Case Law
 - Current Legal Issues, Major Policy Shifts, and What IHEs Should Know
- Conclusion & Closing Reflections

Objectives

- Gain a general understanding of the breadth of legal issues impacting higher education institutions.
- Better understand some of the current hot button higher education legal issues.
- How to best engage with your campus legal staff.



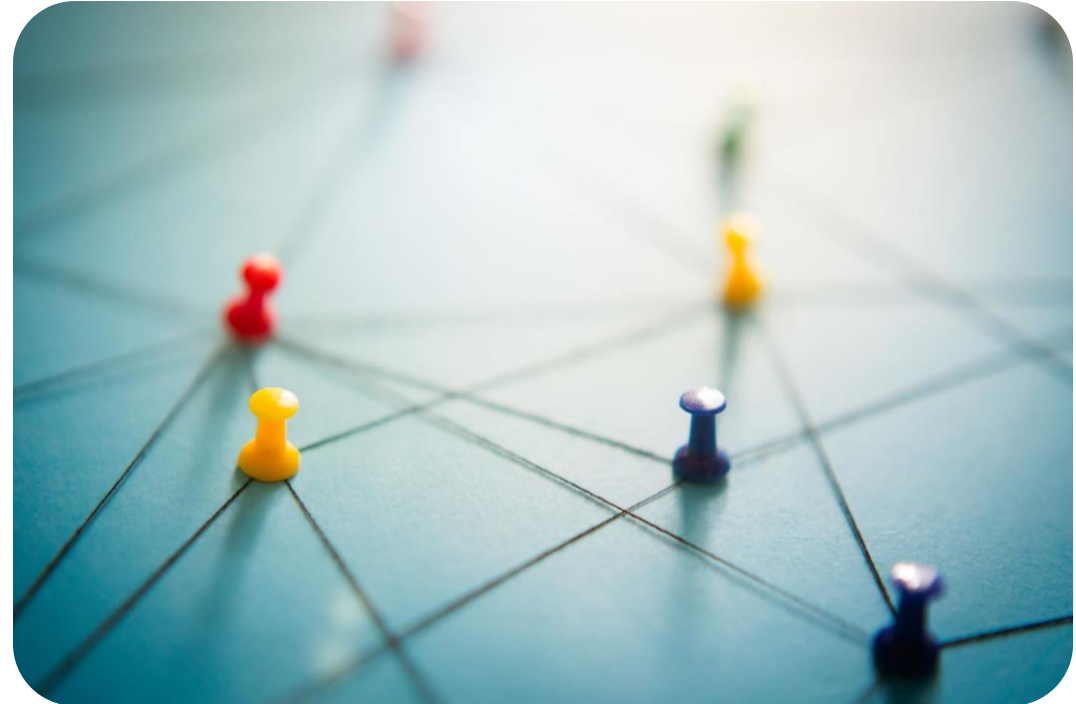
Scope of Legal Issues Impacting Your IHE

The Scope? Boundless

- Accreditation
- Accommodations
- Athletics
- Campus Police/Safety
- Compliance and Risk Management
- Constitutional Issues
- Contracts
- Crisis Management and Investigations
- Discrimination
- Diversity, Equity & Inclusion
- Faculty and Staff
- Intellectual Property
- Litigation and Dispute Resolution
- Name Image and Likeness
- Online Programs
- Privacy and Transparency
- Real Property, Facilities, and Construction
- Research
- Shared Governance
- Students
- Taxes and Finances
- Title IV and Federal Student Aid
- Title IX and Sexual Misconduct

Legal Obligations – Where Did They Come From?

- State and Federal Law
- Contract Obligations
- Employer and Employee Relationship
- Business with a Product/Service
- Common Law
- Premises Liability
- Research



State & Federal Legal Obligations

- Public and Private Non-Profit IHEs
- State Authorizations
- Program Participation Agreement
- Title IV Federal Student Aid Funding Obligations
 - Title IV Eligibility Requirements – degree paths, length, certificate requirements, authorizations from state and DOE recognized accreditor
 - Subject to Audits by Office of Federal Student Aid - Program Review Process

Higher Education Compliance Alliance

[Compliance Matrix](#)

Obligation Sources Cont'd

- Contracts
 - Anti-Kickback; HIPAA; FERPA; Trade Sanctions; Obligations Created by Contract Provisions
- Employer/Employee
 - Benefits – COBRA, Title IX, Cafeteria Plans, ERISA; tenure obligations
- Premises Liability
 - Housing Requirements – ADA, Title IX, etc.; Injury on Campus – students, guests, invitees, and standard of care
- Research
 - Funding Requirements; America COMPETES Act; Research Misconduct Policies

Checklists, Policies, Updates, Oh My!

- Simple, but effective. For example, creating a template checklist for all contracts with major contract provisions (think: term, termination, applicable law, etc.) that includes high priority compliance non-negotiables:
 - Termination of agreement ending program(s) at an additional location? Make sure those termination provisions do not conflict with teach-out obligations, if any.
 - State institution? Do the liability terms expand your exposure to include liability in excess of your state immunities?
- Another useful tool: contract management policies. Does your IHE have a contract management policy and does it include:
 - Who has the authority to execute and bind the IHE? Contract \$\$ limits?
 - Centralized storage and ongoing management of the same?

**Self Reflection and Discussion:
Legal Issues Top of Mind and
Engaging Your IHEs Counsel**

**2026 – Another Super Boring Year
in Higher Education, Right?**

2026 Regulatory Landscape Key Themes

- Intensified federal oversight + enforcement across higher education
- Major reforms to Title IV student aid (OB3) effective July 1, 2026
- Continued litigation and judicial control over agencies (post-*Loper-Bright*)
- Heightened scrutiny of DEI programs and federal funding compliance
- Expansion of data reporting, accreditation reform, and accountability frameworks

***Selected Highlights of the 2026
Environment of American Higher
Education from The Chronicle of Higher
Education***

Two States Are Pausing H-1B Hiring at Public Universities. Here's What That Could Mean.

By Jacquelyn Elias

This week, Texas Gov. Greg Abbott, a Republican, ordered a pause on hiring new foreign employees at the state's public universities until June 2027. The move followed a similar directive from another reform-minded Republican, Florida Gov. Ron DeSantis, who in October told public universities to end "H-1B abuse." DeSantis was referring to the H-1B visas that allow international scholars to work in the United States.

The State University System of Florida's Board of Governors will vote Thursday on a proposed policy that would halt H-1B hiring until early 2027. DeSantis has cited the need "to make sure our citizens here in Florida are first in line for job opportunities."



The Chronicle/Getty Images

THE CHRONICLE OF HIGHER EDUCATION

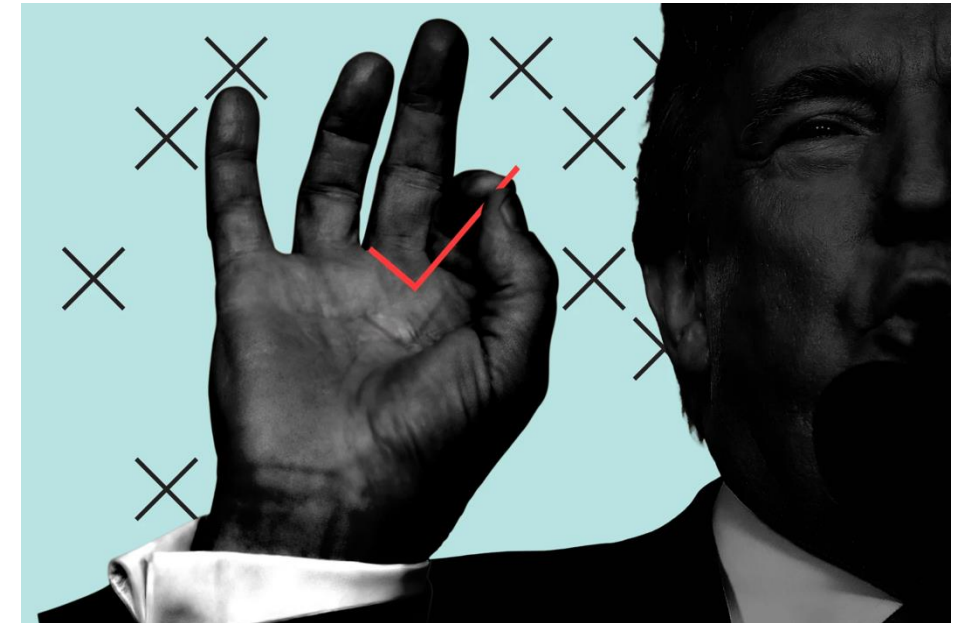
What Trump's Top Higher-Ed Official Has in Mind for College Accreditation

By Eric Kelderman

The official charged with carrying out the Trump administration's higher-education agenda has a particular diagnosis for what's ailing colleges.

"We are here because the value of higher education is in question by too many — and at the center of that is our quality-assurance system," Nicholas Kent, under secretary of education, said in a Tuesday interview. "It is undeniable that accreditors are failing institutions, they're failing students, and they're failing taxpayers."

Under Kent, the Education Department's plans to overhaul regulations for accreditation are quickly taking shape, with a planned focus on more accountability for student outcomes, streamlined processes for approving new accreditors, and reduced administrative costs and burdens. A stamp of approval from a federally recognized accreditor is a requirement for colleges to receive funds like Pell Grants and direct student loans.



The Chronicle/Evan Cucci/AP

THE CHRONICLE OF HIGHER EDUCATION

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Justice Dept. Again Sues Harvard, Alleging ‘Failures’ to Combat Antisemitism

By Sonel Cutler

The Trump administration on Friday filed a lawsuit accusing Harvard University of allowing discrimination against Jewish and Israeli people, escalating its attacks against an institution that’s become the centerpiece of its crusade against higher education.

The lawsuit, filed by the Justice Department in the U.S. District Court for the District of Massachusetts, alleges the university violated students’ civil rights under Title VI — which prohibits discrimination on the basis of race or national origin, including shared Jewish ancestry, in any program receiving federal funding — in the wake of the October 7 Hamas attack on Israel.

“Harvard has failed to enforce its rules or meaningfully discipline the mobs that occupy its buildings and terrorize its Jewish and Israeli students,” the lawsuit reads. “The United States cannot and will not tolerate these failures and brings this action to compel Harvard to comply with Title VI, and to recover billions of dollars of taxpayer subsidies awarded to a discriminatory institution.”



Cassandra Klos/Bloomberg/Getty Images

THE CHRONICLE OF HIGHER EDUCATION

Trump Administration Investigating Smith College for 'Admitting Men'

By Kate Hidalgo Bellows

The Trump administration is investigating Smith College, a historic women's institution, for admitting transgender women and granting them access to facilities for women.

An Education Department news release acknowledged that private colleges qualify for a Title IX exemption that allows them to enroll only one sex — “but the exception applies on the basis of biological sex difference, not subjective gender identity.” The headline of the release accuses the college of “admitting men.”

The news release stated that “when an institution holds itself out as being an all-women's college, it is not just promising to deliver female-only dorms and bathrooms, and single-sex athletics; it is also committing to maintain a student body that makes possible a particular form of sorority and camaraderie.”



John Greim/Newscom

THE CHRONICLE OF HIGHER EDUCATION

Update on Elimination of the Education Department

Elimination of ED's Substantive Work

- Although Trump could eliminate the ED without an act of Congress, the administration has taken steps to eliminate the ED's substantive work
 - March 2025
 - 1,300 ED employees laid off; 300 accepted an offer to resign
 - Trump directed Linda McMahon (Secretary of Education) to “take all necessary steps” to close the ED without eliminating its core functions
 - May 2025
 - Federal judge orders that the 1,300 employees laid off be rehired
 - July 2025
 - SCOTUS overturns federal district court ruling that temporarily halted layoffs
 - November 2025 – the ED signs interagency agreements shifting responsibilities to, and creating “partnerships” with:
 - Department of Labor – Postsecondary Education Partnership
 - Department of the Interior (DOI) – Bureau of Indian Education

Implications of the Elimination of ED's Substantive Work

- Fragmentation of federal education laws and programs
- Loss of specialized education expertise
- Increased administrative burden
- Risk that funding will be disrupted
- Potential for inconsistent standards
- Compel IHEs to develop networks with multiple relationships across multiple departments

A Post-Loper Bright World

Loper-Bright v. Raimondo

Supreme Court ruling issued June 28, 2024

Overtaken longstanding doctrine that requires courts to defer to an agency's reasonable interpretation of an ambiguous statute that it administers (*Chevron* 1984).

Instead, courts must exercise "independent judgment" in determining whether an agency's actions align with its statutory authority.

In other words, courts must "independently" interpret the statute and effectuate the will of Congress.



Take Title IX compared to *West Virginia v. EPA* and *Loper-Bright*

- *Loper-Bright* ended Chevron Deference and followed *West Virginia v. EPA*
- *West Virginia v. EPA* (2022) challenged ability of an agency to regulate in a space where the Court found Congress had not sufficiently delegated the authority.

Section 111(d) of the Clean Air Act

vs.

Title IX of the Education Amendments Act of 1972

§7411. Standards of performance for new stationary sources

(a) Definitions...For purposes of this section:

(1) The term "standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated....

(d) Standards of performance for existing sources; remaining useful life of source

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which:

A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and

B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 7410(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 7413 and 7414 of this title with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”



Loper-Bright Impacts Have Arrived

- Post-*Loper-Bright* the administrative Wild West began preparing for the practical impacts the ruling would have on the likelihood of success challenging agency decisions
 - Courts, not agencies, now determine statutory meaning
 - Likely more lawsuits challenging DOE regulations
 - Institutions must evaluate legal defensibility, not just compliance
 - Regulatory instability = policies may change quickly through litigation
- 2026 Cases:
 - TIX and Transgender Athletes
 - *West Virginia v. B.P.J.* (and companion case *Little v. Hecox*) No. 24-43, 599 U.S. ____ (2026)
 - Emotional Support Animal HUD/ADA Guidance
 - *Henderson v. Five Properties* - No. 24-750 (E.D. La. July 16, 2025)



Major Legal Compliance Topics and Recent Shifts You Should Know About

Compliance Areas of Focus – 2026

- Title IV and Federal Funding – OB3 Act implementation (loan limits, Workforce Pell, Program Accountability) and Increased Program Reviews and Reporting Obligations
- Title VI and DEI – DEI Executive Orders, Funding, DOJ Antisemitism Task Force and Title VI Enforcement Activity
- Title VII – Alignment with Executive Orders and EEOC Enforcement Priorities
- Title IX and Clery – Reversion to 2020 Rules; 2024 Rules Vacated; Increased Investigations; Clery Expansion
- First Amendment – Free Speech and Campus Protests
- Misc. Compliance – DOJ Data Security & Compliance Programs, Fraud, International Students, Accreditations

Title IV, Financial Aid, and Financial Stresses

Title IV & Federal Funding: OB3 Act Implementation and Loans

- Reduced federal loan limits and eliminated Grad PLUS
- The Reimagining and Improving Student Education (RISE) final rule distinguishes between graduate and professional students annual and aggregate on loan limits – originally only 11 programs included as “professional”

- Ready, set,



!!!!

Direct Unsub. Loan Limits Litigation

- On 6/24/26 a federal court halted ED's implementation of list just before 7/1, saying ED didn't have authority
- On 6/29/26, ED published GEN-26-42 – including new list with 29 degrees that will be considered “professional” while litigation continues
- Plaintiffs asked ED to clarify if the list was exhaustive and the scope of the 6/29 list
- On 7/10/26, ED revised GEN-26-42 to include any program sharing a “CIP” code with Registered Nursing/Registered Nurse (MSN) (51.3801) and Nursing Practice (DNP) (51.3818) and added Clinical Psychology Ph.D. programs with CIP code 42.2801 that were inadvertently omitted

Other TIV Updates

- STATS System:
 - ED finalized the Student Tuition and Transparency System (STATS) and Earnings Accountability rules on July 1, 2026.
 - Imposes strict transparency requirements regarding institutional pricing and graduate earnings data.
- R2T4:
 - Full Refund Withdrawal Exemption and waiver of R2T4 calculation
 - Proration under Schedule of Reduction (SOR) intensity analysis
- Workforce Pell:
 - Formally established new Workforce Pell Grant program, opening federal funding to short-term, demand-driven workforce programs with emphasis on state oversight

Increased Regulatory Requirements and Financial Stresses

- Consider fiduciary duty obligations of officers and trustees
- Endowment management under UPMIFA
- Downsizing/restructuring/eliminating programs
- Faculty/Student handbook issues
- Early exit plans
- Dealing with the Triad
- Timing issues are critical

Key Risks

- Federal Funding Pressure
 - Pell Grant Program facing \$5.5B projected shortfall, growing longer-term
 - Budget pressure includes:
 - Flat Pell funding
 - Proposed elimination of SEOG and reduced Work-Study
- Major Student Aid Policy Changes (OB3)
 - New loan limits + elimination of Grad PLUS
 - Pell expansion to workforce programs and changes to borrow repayment structures
- Increased Regulatory & Accountability Pressure
 - Programs must meet earnings-based outcomes to retain Title IV eligibility
 - Increased institutional oversight tied to program performance

Institutional Response: How IHEs Are Adapting

- Financial Strategy Adjustments – Planning for:
 - Federal aid volatility
 - Structural funding gaps (Pell + loan changes)
 - Increasing focus on alternative revenue streams (e.g., workforce programs tied to Pell expansion)
- Aid & Enrollment Management
 - Earlier FAFSA launch → faster student decision cycles
 - Institutions responding by:
 - Accelerating aid packaging timelines
 - Improving cost transparency

Institutional Response: How IHEs Are Adapting

- Operational Scaling & Compliance
 - Increased administrative burden:
 - FAFSA processing changes
 - Fraud issues
 - Loan eligibility and system updates
 - Institutions investing in staffing and systems modernization
- Risk Mitigation & Mock Program Reviews
 - Evaluating program viability based on:
 - Earnings outcomes
 - Enrollment demand
 - Some institutions considering program restructuring or teach-outs

ED Program Reviews – what are they?

- Evaluations of IHEs through ED Office of Federal Student Aid, required to be conducted by law, focused on TIV but not limited to your Financial Aid Office.
- Designed to strengthen administrative capabilities and financial responsibilities of IHEs pursuant to PPAs.
- All TIV participating IHEs could be selected, but possible triggers include: (1) high default/dropout rates, (2) major changes in TIV funds volume, (3) administrative capabilities/financial responsibility fail risks; or (4) reports made to ED.
- As of July 1, 2026, ED had began sending out FPRDs on a portion of open PRRs, unclear if/when ED will completely resolve.

What to Expect When You're Expecting (a Program Review)

- Advance Notice – when, who, AYs, and document requests
 - Documents: TIV forms, applications, worksheets; sample files of award data (FSA forms requiring input of student level info, *e.g.*, TIV award data, w/d info, student accounts); enrollment info and NSLDS data; course level information; annual reports; policies & procedures (SAP, R2T4, Award Calculations, Withdrawals, Credit Balance); TPS info, *etc.*
- Interviews
 - Entrance Interview, Individual Staff Interviews During Review, and Exit Interview
 - Involved: Financial Aid, Registrar, Admissions, Academics, Business Office, Leadership, Campus Security, *etc.*
- PRR – Preliminary Review Report
 - Findings, Liabilities, and IHE response
- FPRD – Final Program Review Determination
 - Timeline
 - Response/Appeals Process to ED Office of Hearing and Appeals

Program Reviews – What to Expect

- More data-intensive requests (student-level records, outcomes data)
- Greater scrutiny of:
 - Attendance and withdrawal determinations
 - R2T4 calculations
 - Distance education classifications
 - Enrollment Reporting
- Increased likelihood of:
 - Financial liabilities
 - Corrective action plans
 - Repeat monitoring or follow-up reviews

Borrower Defense to Repayment Claims

Borrower Defense Claims (BDC): Current Snapshot & Context

- ED began issuing rounds of BDC notifications (March 2026) after settlement of class-action *Sweet v. McMahon*.
- Many BDCs sitting for years and students enrolled decades prior
- Regulatory Analysis is *messy*
 - Each BDC is different. Requires review of loan data, disbursement and consolidation dates to understand which of the three (1994, 2016, or 2019) regulatory frameworks applies, and state-specific law analysis in some cases.
- Early positioning matters for future recoupment exposure

BDC Financial Risk & Response Strategy

- Potential Financial Exposure:
 - Loan discharges → ED may seek institutional recoupment
 - Risks include:
 - Direct financial liability
 - Compliance/audit scrutiny
 - Reputational impact
- Responses
 - IHEs have 60* days to respond if IHEs choose to do so
 - If the BDC proceeds, IHEs will have to engage in the BDC process

Documentation & Considerations

- Critical Documentation:
 - Financial aid records (FAFSA, awards, loan history, counseling)
 - Academic records (transcripts, enrollment, graduation/withdrawal)
- Operational Impact:
 - Cross-functional effort (FA, Registrar, Compliance)
 - Claims often unclear → requires reconstruction
 - Strong documentation = lower liability risk
 - Prepare scalable processes if claim volume increases
 - Consider contingent risk monitoring, even at low volume

Title VI

Title VI, Civil Rights Act of 1964 - Overview

- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- A school or college violates Title VI if it intentionally treats persons differently or otherwise causes them harm because of their race, or if a school or college creates or is responsible for a racially hostile environment.
 - A hostile environment exists where there is conduct that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a school or college.
- Complaints can be filed with the Office of Civil Rights (OCR).
- No retaliation for filing OCR complaints.

Title VI and Antisemitism Executive Orders, Actions, and Challenges

- January 29, 2025, Executive Order, Department of Justice (DOJ) Task Force cross-department taskforce including USDOE, to “root out anti-Semitic harassment in schools and on college campuses.”
- February 28, 2025, DOJ announced visits to 10 IHEs alleged to have “experienced antisemitic incidents” since October 2023
- March 10, 2025, OCR Investigation letters sent to 60 IHEs under investigation for Title VI violations for antisemitic harassment and discrimination

Funding freezes

- Late 2025- 2026, Congress pursued the Antisemitism Awareness Act of 2025 and the No Antisemitism in Education Act of 2026 to legally bind institutions to adopt uniform definitions of antisemitic discrimination
- Early 2026, USCCR initiated public hearings/investigations to evaluate whether this regulatory push sufficiently protected civil rights without encroaching on First Amendment rights

Title IX, Title VII, and Clery

Title IX, Education Amendments of 1972

“No person in the United States shall, on the basis of sex, be excluded from participation, in be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

Title IX Regulations and Challenges



2024 Regulations

2024 Title IX rules vacated by federal court (Jan. 9, 2025)

2020 regulations now govern nationwide

Increased enforcement focus on:

- Athletics and “biological sex” distinctions
- Transgender participation policies

Creation of Title IX Special Investigations Team (SIT)



Legal Challenges

“Regulatory whiplash” → institutions must track rapid enforcement changes

Inclusion of “gender identity” in the definition of “sex” without authorization from Congress

Constitutional violations

Multi-state campus considerations

Title IX Update

- February 4, 2025: Office for Civil Rights issued “Dear Colleague Letter” to announce it would enforce 2020 Title IX Rule (issued by first Trump administration) instead of recently invalidated 2024 Title IX Final Rule
- February 5, 2025 - Trump signed an executive order interpreting the gender-equity law Title IX as barring the participation of transgender women in women’s sports.
- April 28, 2025 - University of Pennsylvania violated Title IX by allowing Lia Thomas, a transgender athlete, to compete on a women’s sports team in 2021 and 2022.
- January 28, 2026 - San Jose State University found in violation of Title IX because it had allowed a transgender athlete to participate on its intercollegiate women's volleyball team.
- April 6, 2026 - The Education Department rescinded resolution agreements with several school districts and Taft University over the treatment of students who identify as transgender. Administration argued that the agreements relied on an illegal interpretation of Title IX.

Title IX Update: Little v. Hecox and West Virginia v. B.P.J.

- Two challengers, both transgender women
- Lindsay Hecox: 24, sought to join women's track/cross-country at Boise State; now competes at club level
- B.P.J.: 15, publicly identified as female since grade 3; on puberty blockers and estrogen; barred from girls' sports under WV law
- Idaho law (2020): Fairness in Women's Sports Act – bans transgender women/girls from female teams in public schools (K–college)
- WV law (2021): Save Women's Sports Act – bans transgender women/girls from female teams in public secondary schools and colleges

Title IX Update: Little v. Hecox and West Virginia v. B.P.J.

- Issues
 - Whether Title IX of the Education Amendments of 1972 prevents a state from designating girls' and boys' sports teams based on biological sex determined at birth;
 - Whether the equal protection clause of the 14th Amendment prevents a state from offering separate boys' and girls' sports teams based on biological sex determined at birth.

Title IX Update: Little v. Hecox and West Virginia v. B.P.J.

- Ruling - states may restrict women's and girls' sports teams to athletes identified as biologically female at birth and such state bans do not violate either Title IX or the Equal Protection Clause.
 - Title IX: unanimous decision, SCOTUS determined that the term "sex" in the federal civil rights law means biological sex (or sex assigned at birth), rather than gender identity
 - Equal Protection: 6-3 split on the constitutional question, majority concluded that the state bans do not violate the Fourteenth Amendment's Equal Protection Clause
- Potential implications in HE context

Other Title IX –Title VII Updates

- *Crowther v. Board of Regents of the University System of Georgia* (U.S. Supreme Court review granted May 2026)
- Combines Title IX and Title VII
- Title VII - Prohibits discrimination in employment (including hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, national origin, or sex.
 - Administered by the Equal Employment Opportunity Commission (EEOC).
 - Executive Order - “Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government”
 - Instructions following *Bostock v. Clayton County*, which held that Title VII’s ban on discrimination based on sex also prohibits discrimination based on gender identity and sexual orientation.
 - Instructs Chair of Equal Employment Opportunity Commission (and others) to prioritize “investigations and litigation to enforce” which would align with Executive Order policies.

Title IX – Title VII: Crowther SCOTUS case

- What the Court is reviewing: Whether employees at federally funded colleges and universities can bring sex discrimination claims under Title IX, or must rely exclusively on Title VII
- Background: Georgia Tech women's basketball coach alleged she was fired after raising concerns about gender inequities
- Lower court ruling: The Eleventh Circuit held that Title IX does not provide a private right of action for employees, directing such claims to Title VII
- Circuit split: Majority of federal circuits allow Title IX employment claims, but others (including the Eleventh) reject them, creating inconsistent national standards
- Potential impact:
 - Allowing Title IX claims could expand employee legal options and increase liability for schools
 - Rejecting them would confirm Title VII as the exclusive path for employment discrimination claims

Clery Act Compliance

- U.S. Department of Education reviewing Brown University's security procedures for possible Clery Act violations after Dec. 13 shooting that killed two students.
- Department requested documents: ASRs, crime logs, reported crime records, and list of timely warnings/emergency notifications since 2021.
- Secretary Linda McMahon emphasized universities' obligation to protect students and comply with federal law.



Clery Act Compliance

- Reporting Obligations
- Annual Security Report (ASR)
- Daily Crime Log
- Timely Warnings/Emergency Notifications
- Disciplinary proceedings: dating violence, domestic violence, sexual assault, stalking
- Establish a Culture of Compliance

History of Clery Act Fines

- Median fine between 2010 to 2017 was \$47,250
- 2018 - University of Montana - \$1 million fine over Clery Act violations
 - Violations include the failure to properly report at least seven forcible sexual offenses from 2012 to 2015.
- 2019 – Michigan State University - \$4.5 million in Clery Act fines over Larry Nassar sexual-assault scandal
- 2024 - Liberty University – \$14 million fine over violations of Clery Act
 - U.S. Department of Education report found that Liberty “systemically underreported” its crime statistics
 - The university must also spend an additional \$2 million over the next two years on campus-safety improvements and compliance enhancement on top of their current campus-safety budget.

First Amendment

Posts and Protests

Charlie Kirk / Faculty Litigation

- By early July 2026, colleges have paid nearly \$3 million to settle three legal challenges brought by former employees who were disciplined for remarks they made/posted about Charlie Kirk and his death.
- Plaintiffs brought First Amendment claims arguing that disciplinary actions were tantamount to censorship of protected speech, accusing their respective colleges of folding to political pressure and violating their commitment to free speech and academic freedom.
- Balancing act

Campus Protest

- Although less prevalent, protests continue
- Policies and response plans
- PR/common sense v. legal responses
- Addressing issues early
- Office for Civil Rights letters sent to 60 IHEs warning of enforcement actions if they fail to fulfill obligations under Title VI to protect Jewish students

Misc!

Data Security Compliance

- U.S. Department of Justice's Data Security Program (DSP) Requirements (28 CFR 202)
- Executive Order 14117
 - Issued February 28, 2024
 - Identified ongoing efforts of foreign adversaries (including countries of concern and private individuals and entities) to access, exploit, and weaponize U.S. Government-related data and Americans' sensitive personal data
 - Identified certain transactions involving data which should be prohibited
 - End Result - Directed Department of Justice to issue regulations to prohibit certain transactions involving protected U.S. data
- Countries of Concern: China (including Hong Kong and Macau), Cuba, Iran, North Korea, Russia, & Venezuela
- Covered Persons: Individuals or entities subject to jurisdiction, ownership, control, or direction of Countries of Concern

DOJ Data Security Program (DSP) – 2026 Reality

- Applies to sensitive personal data + research data
- Restricts data access by foreign adversaries
- Requires:
 - Vendor due diligence
 - Data mapping + classification
 - Export-control style compliance programs
- Noncompliance → civil + criminal penalties
- This represents a major shift: data treated like a national security asset

EO: Reforming Accreditation to Strengthen Higher Education

- April 23, 2025 - Order calls on the Attorney General and the Secretary of Education to investigate and take action accrediting agencies that encourage “unlawful discrimination” and unlawful “DEI inclusion requirements that are under the guise of accreditation standards.
- The Order also directs the Department of Education to:
 - Make it easier for institutions to change accreditors
 - Resume recognition of new accreditors to increase competition
 - 6/25/25 – Desantis announced “Commission for Public Higher Education” – FL, GA, NC, SC, UT, T A&M schools to join
 - Requiring institutions use program-level student outcome data to improve results, without reference to race, ethnicity, or sex.



EO: Reforming Accreditation to Strengthen Higher Education

- The Order also directs the Department of Education to:
 - Ensure that barriers are reduced that limit institutions from adopting practices that advance credential and degree completion and spur new models of education
 - Accreditors are prohibited from engaging in practices that result in credential inflation that burdens students with additional unnecessary costs (gen ed courses)
 - Prioritize academic freedom and intellectual diversity among faculty,
 - Concerns that this could and would be weaponized to pursue political goals and punish enemies
 - Streamline the accreditor review and transition process so schools are not trapped by ideologically driven standards.
- Federal law and regulations set the process for recognizing new accrediting agencies.



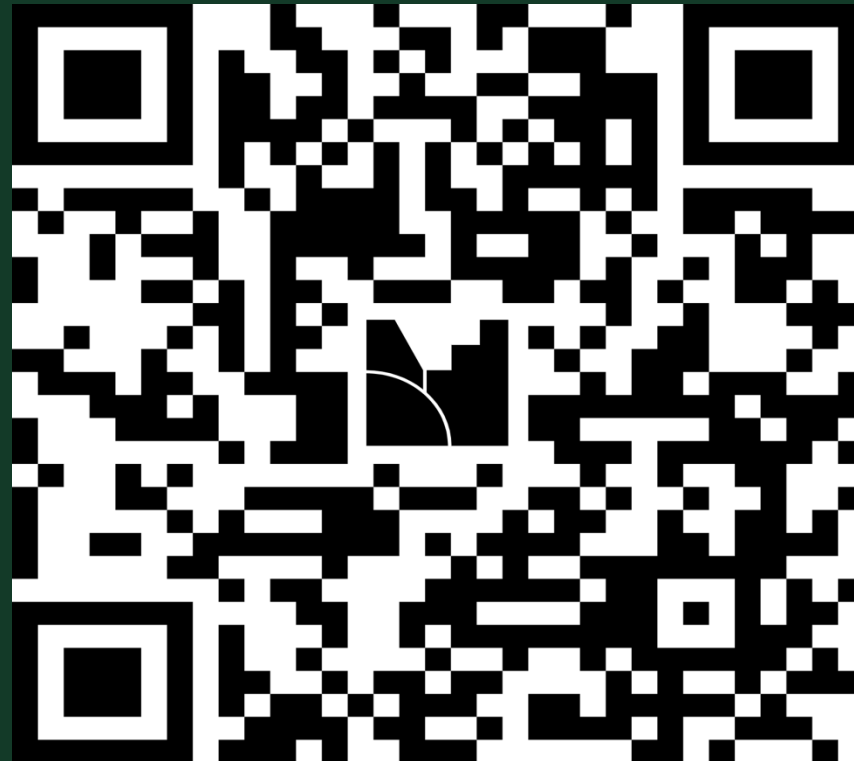
Key Takeaways

Strategic Takeaways for IHEs (2026)

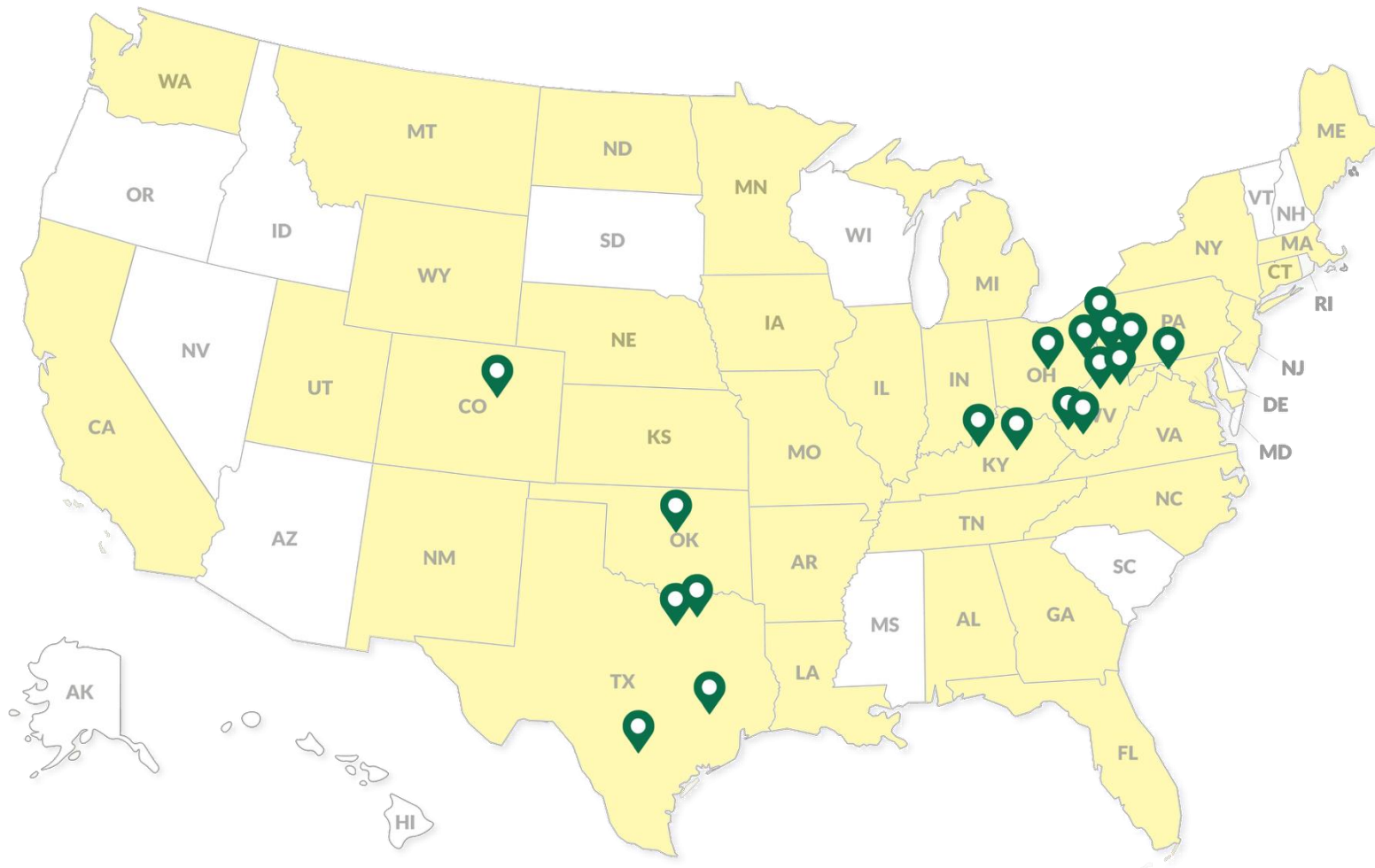
- Build litigation-ready compliance programs (not just policy compliance)
- Audit DEI, Title IX, and funding-related practices
- Prepare for federal investigations tied to funding
- Invest in data governance + cybersecurity controls
- Align programs with ROI and workforce outcomes
- Monitor rapid regulatory change via courts (not just agencies)

Poll and Discussion

Top Areas of Concern



Final Thoughts and Questions



Office Locations

- Bridgeport, WV
- Charleston, WV
- Collin County, TX
- Columbus, OH
- Dallas, TX
- Denver, CO
- Huntington, WV
- Lexington, KY
- Louisville, KY
- Martinsburg, WV
- Meadville, PA
- Morgantown, WV
- Oklahoma City, OK
- Pittsburgh, PA
- San Antonio, TX
- Southpointe, PA
- The Woodlands, TX
- Wheeling, WV

 **Attorney Licensure**

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