

Executive Orders, Dear Colleague Letters, Resolution Agreements, & Toto Too!

Presented by the Office of Civil Rights & Title IX

Lauren Jones McKown, J.D.

Casey Smith, J.D.



Agenda

1. Definition Refresher
2. Legal, Compliance, & Enforcement Frameworks
3. Enforcement Trends & Impact at KU
4. Takeaways
5. Questions

Disclaimer

The views expressed today are my own and do not necessarily represent the views of the Office of Civil Rights & Title IX or the University of Kansas. We are attorneys, but are not able to provide legal advice in our presentation today.

Goals

- Define different types of federal and state laws, regulations, guidance.
- Explain trends that we are tracking within the laws, regulations, guidance, and ongoing litigation.
- Provide context on how these trends have impacted the university, the work we do, and at an individual level.
- Discuss tangible takeaways.

Definition Refresher

- **Executive Order (EO):** A written directive from the president that orders the federal government to take specific actions to ensure laws are “faithfully executed as required in the Constitution.”
- **EOs are NOT binding law**, like a statute passed by Congress; however, they bind the agencies named and directed by the EO.
- **Dear Colleague Letter (DCL):** A DCL is subregulatory guidance on how an agency, usually the Department of Education, interprets a law/regulation and informs educational institutions on how they will enforce their interpretation.
- **Resolution Agreement/Letter (RA):** After the conclusion of an investigation, settlement, or mediation, an agency will publish a resolution letter that lays out the agreement between the agency and the institution under investigation.

Definition Refresher

- **Agency Guidance Memo:** An agency may provide a memo to state/clarify how they will interpret and enforce a specific law, regulation, executive order, or Supreme Court opinion.
- **Budget Proviso:** Language in a budget that provides or restricts funds for a specific purpose.
- **Proposed Rule:** A proposal of an agency's regulatory action that calls for public comment and feedback.
- **Final Rule:** The agency's regulatory action as published in the Federal Registrar that incorporates public comment and the agency's responses. The final rule is used as the foundation for an agency's enforcement processes.

Legal Framework

- **Title VI: Prevents the exclusion, denial of benefits, or discrimination on the basis of race, color, or national origin in any educational program or activity receiving federal financial assistance.**
- **Title VII: Oversees employment practices such as hiring, firing, compensation, and other terms, conditions, and privileges of employment. Prevents an employer from discriminating against an individual because of their race, color, religion, sex*, or national origin.**
- **Title IX: Prevents the exclusion, denial of benefits, or discrimination on the basis of sex in any educational program or activity receiving federal financial assistance.**
- **Americans with Disabilities Act (ADA): Prohibits discrimination against people with disabilities in employment, education, and everyday activities, allowing for reasonable modifications to programs and activities to accommodate disabled individuals' participation.**

A Rapidly Shifting Enforcement Landscape

- Although the laws and the legal framework have not changed, enforcement of these laws has.
- Traditionally, oversight for compliance with applicable civil rights laws came from the Department of Education (DOEd) and/or the Department of Justice (DOJ).
- Now, multiple agencies (e.g., the FDA and Dept of Energy) that were not previously overseeing compliance with civil rights laws are interpreting and enforcing these laws, including in education, and the nature of the penalties has evolved.

Enforcement Now & Then

An investigation at the DOEd or DOJ often begins with a complaint by an individual or an organization, and the agency would review the complaint and notify the institution that it would investigate the complaint pursuant to its published processes (i.e., Case Process Manual).

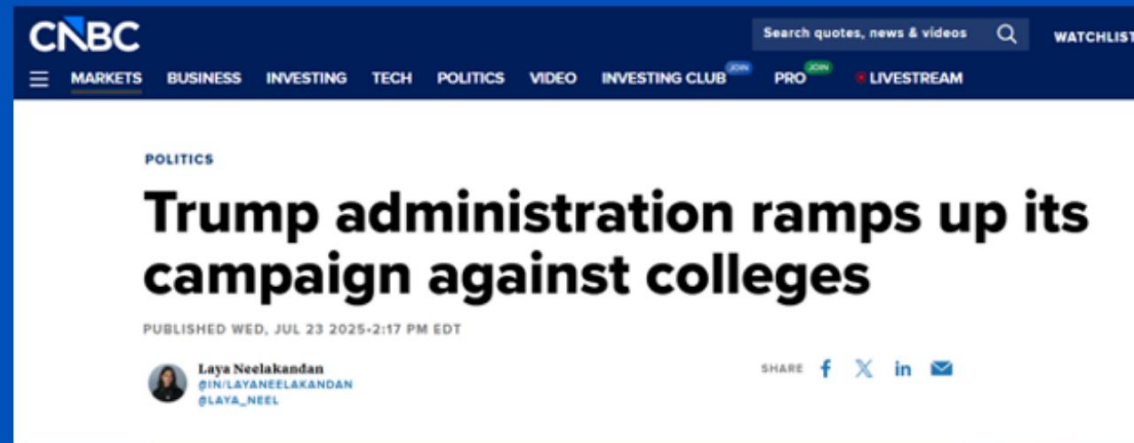
Prior to this administration:

- Investigations into institutions followed CPM, and institutions would sign resolution agreements which often included policy changes, monitoring, and sometimes monetary damages.

Jan. 2025 – current enforcement:

- Investigations into institutions still follow the CPM (updated most recently in Jan. 2025)
- Different strategies for resolving investigations, including:
- Resolution Agreements
- Settlement Agreements (often with high monetary damages)
- Litigation
- Compact for Academic Excellence in Higher Education





How Is Trump Targeting Universities, and How Are They Responding?

President Trump has tried to defund some colleges, including several of the world's wealthiest schools. Some are negotiating. Others have drawn a line.

Why Does This Matter?

- Educational institutions are one of the top priorities for both Federal and State enforcement officials.
- With daily news articles and headlines, it gets confusing what is actually the law and what is not. This means it's confusing to know what is actually impacting you and the university and how far reaching that impact may be.

Trends in Enforcement

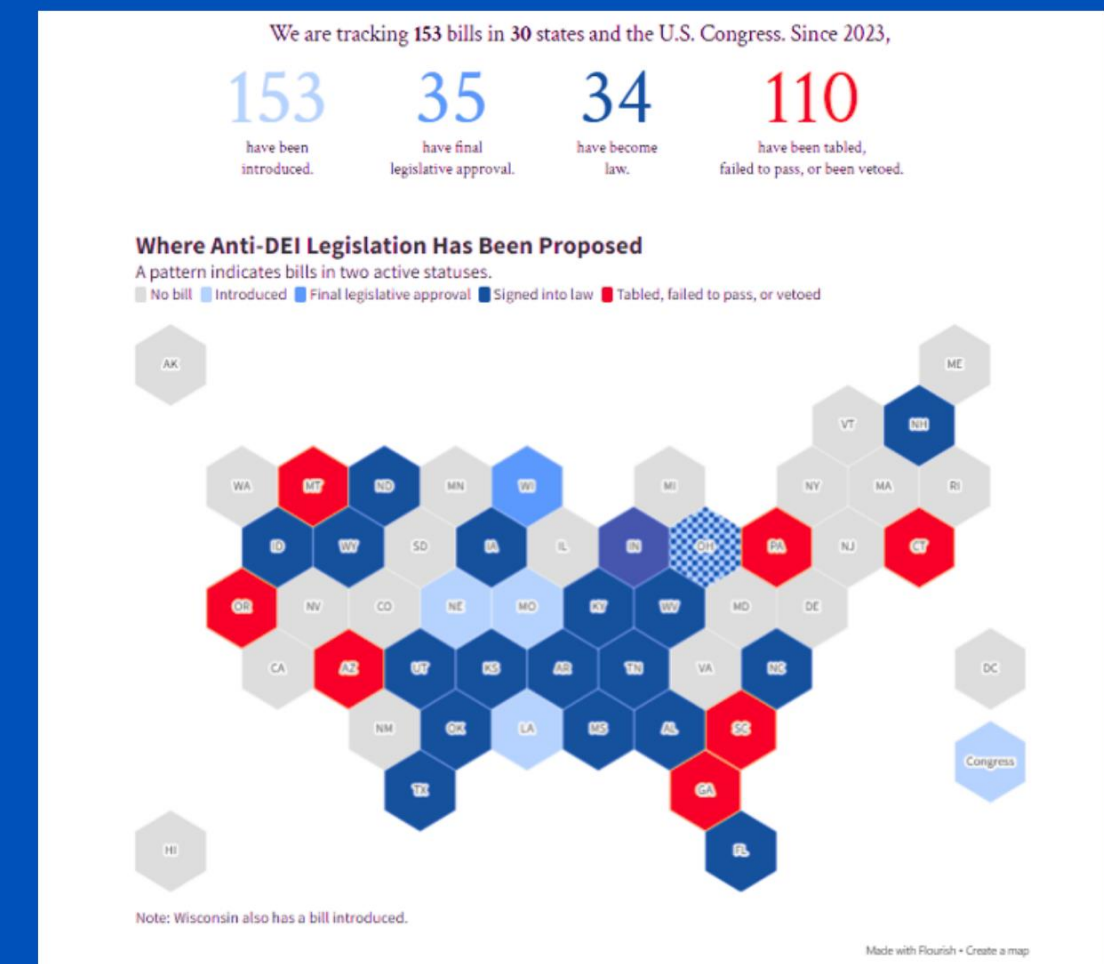
- Anti-DEI
- Programs, Activities, and Opportunities using protected characteristics as a motivating factor.
- “Gender Ideology”
- Antisemitism
- Immigration

What is DEI?

- Diversity, Equity, and Inclusion, or “DEI,” was defined by KBOR on June 17, 2026, as “content that establishes and promotes the preferential treatment of groups based on race, color, gender, ethnicity, or national origin.”
- But excludes “discussions of race, racism, or the history of the civil rights movement” from the definition of DEI content.
- Examples have been provided at the federal level:
 - “Unlawful discrimination” through “DEI practices” includes “race-based scholarships or programs, preferential hiring or promotion practices based on a protected class, access to facilities or resources based on race or ethnicity, and mandatory trainings that promote discrimination based on protected characteristics.” (DOJ 7/29/25 Memo)
 - “Racially discriminatory DEI activities” includes “disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (e.g., vendor agreements), program participation, or allocation or deployment of an entity’s resources.” (EO 14398)

Anti-DEI at the State Level

- Between 2023 and 2024, states (including Kansas) were the primary forces behind restricting Diversity, Equity, and Inclusion (DEI).
 - Only 15 laws were passed nationwide in these two years pertaining to restricting DEI
 - Kansas HB 2105 (2024)
- 2025 and 2026 held nationwide trends (across state legislatures and the federal government) in increased efforts to restrict DEI.
 - Between 2025 and 2026 (so far), 17 bills were passed nationwide restricting DEI.
 - Kansas SB 125 (2025): Budget Proviso restricting pronouns in email signature and DEI practices.
 - Kansas HB 2513 (2026): Budget Proviso restricting pronouns in email signatures, DEI practices, and requirements for “DEI-CRT” classes.



<https://www.chronicle.com/article/her-e-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts>
*Last updated July 9, 2026

Anti-DEI at the Federal Level

- **Several EOs signed to limit and prohibit DEI**
 - EO 14151 “Ending Radical and Wasteful Government DEI Programs and Preferencing” (Jan. 2025)
 - EO 14173 “Ending Illegal Discrimination and Restoring Merit Based Opportunity” (Jan. 2025)
 - EO 14398 “Addressing DEI Discrimination by Federal Contractors” (Mar. 2026)
- **Several Agency Memos, DCLs, and Proposed Regulations regarding prohibited conduct that is labeled as DEI**
 - DOEd DCL “Re: SFFA v. Harvard” (Feb. 2025)
 - DOJ/EEOC Memo “What to Do If You Experience Discrimination Related to DEI at Work” (Mar. 2025)
 - DOJ Memo on the Civil Rights Fraud Initiative (May 2025)
 - DOJ Memo on Unlawful DEI (Jul. 2025)
 - OMB Proposed Rule on Regulations for Federal Financial Assistance (Jun. 2026)
 - EEOC 2026 National Enforcement Plan (Jun. 2026)
- **Investigations into institutions for “illegal DEI” practices.**
 - DOJ investigates Arizona State University for DEI Programs (Jun. 2026)

Programs, Activities, & Opportunities using protected characteristics as a motivating factor.

- **Enforcement trends in this section span across multiple institutional areas, including, but not limited to:**
 - **Admission Practices**
 - **Grants/Scholarships**
 - **Affinity Groups/Student Organizations & Affinity Housing**

Students For Fair Admissions v. Harvard, 600 U.S. 181 (2023).

- **The Supreme Court held that race cannot be the main factor in admitting students to educational institutions.**
- **The federal government has interpreted this holding to apply to all educational programs, activities, and opportunities.**
 - **DOEd DCL re SFFA v. Harvard (Feb. 2025)**
 - **DOJ Memo on unlawful DEI practices (Jul. 2025)**

Admissions Enforcement

- Kansas HB 2105 prohibits postsecondary educational institutions from taking certain actions regarding admission applicants, applicants for employment, and faculty concerning diversity, equity, or inclusion.
- Several investigations by federal agencies into higher education institutions about their admissions practices:
 - 45 institutions for partnering with the PhD Project, including KU (Mar. 2025)
 - George Mason University (Aug. 2025)
 - UCLA Medical School (Jan. 2026)
 - Ohio State University Medical School (Mar. 2026)
 - Stanford Medical School (Mar. 2026)
 - UC Davis Medical School (Jun. 2026)
 - 15 medical institutions (Jun. 2026)

Grants/Scholarships

- **Executive Order 14332 “Improving Oversight of Federal Grant Making” (Aug. 2025)**
- **DOEd Ends Funding to “Racially Discriminatory Discretionary Grant Programs at Minority Serving Institutions” (Sep. 2025)**
- **Acting General Counsel for the DOEd Memo on the Constitutionality for Race-Based funding programs under SFFA v. Harvard (Dec. 2025)**
- **DOEd ends race-based criteria for McNair Grant program (Feb. 2026)**
- **OMB Proposed Rule on Regulation for Federal Financial Assistance (Jun. 2026)**

Affinity Groups/Student Organizations & Housing

- DOEd DCL re SFFA v. Harvard (Feb. 2025)
- DOJ/EEOC Memo re: “What to Do If You Experience Discrimination Related to DEI at Work”
- Housing and Urban Development (“HUD”) DCL (Jun. 2026)

What is “Gender Ideology?”

- Similarly to DEI enforcement, “gender ideology” does not have a concrete and consistent definition across state and federal enforcers.
- The first major usage of the term “gender ideology” was in EO 14168, which states:
“‘Gender ideology’ replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true. Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one’s sex. Gender ideology is internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.”
- Generally, for enforcement, “Gender Ideology” encompasses:
 - Pronouns
 - Defining “Sex”
 - Restroom Access
 - Transgender Female Participation in Competitive Women’s Sports

“Gender Ideology” at the State Level

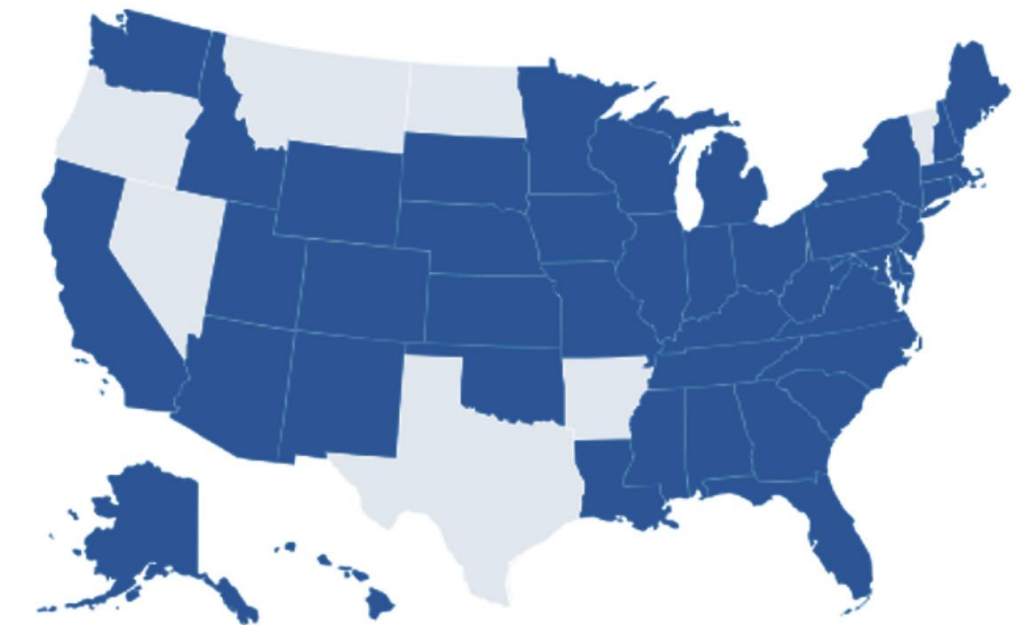
- Several states, including Kansas, passed legislation regarding the concept of “Gender Ideology.”
- Kansas Legislation includes:
 - “Fairness in Women’s Sports Act” (2023)
 - “The Women’s Bill of Rights” (2023)
 - SB 125 (Budget Proviso) (2025)
 - SB 244 (2026)
 - HB 2513 (Budget Proviso) (2026)

2026 anti-trans bills tracker

In 2026, anti-trans bills continue to be introduced across the country. We track legislation that seeks to block trans people from receiving basic healthcare, education, legal recognition, and the right to publicly exist.

805 bills 43 states

65 passed 267 active 473 failed



*<https://translegislation.com/>

*Last updated on July 15, 2026

“Gender Ideology” at the Federal Level

- Several EOs signed regarding “Gender Ideology”
- EO 14168 “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (Jan. 2025)
- EO 14201 “Keeping Men Out of Women’s Sports” (Feb. 2025)
- EO 14398 “Addressing DEI Discrimination by Federal Contractors” (Mar. 2026)
- Several Agency Memos, DCLs, and Proposed Regulations regarding prohibited conduct that is labeled as “Gender Ideology”
- OMB Proposed Rule on Regulation for Federal Financial Assistance (Jun. 2026)
- EEOC 2026 National Enforcement Plan (Jun. 2026)
- Agency actions into institutions for “gender ideology” practices.
- DOEd RA with UPenn for transgender athlete participation (Jul. 2025)
- DOEd found that Denver Public Schools violated Title IX for converting women’s bathroom to a gender neutral restroom (Aug. 2025)
- DOJ sues Minnesota Department of Education to force anti-trans restroom and sports bans at educational institutions (Apr. 2026)
- DOEd finds four Kansas school districts violated Title IX for allowing students use different pronouns and concealing that info from parents (Apr. 2026)
- DOEd investigates Smith College for admitting transgender female students (May 2026)
- Brown University’s settlement agreement to restrict “gender ideology” and define sex in policies according to the federal government’s definition.

West Virginia v. B.P.J., 609 U.S. ____ (2026)

- The Supreme Court held in June 2026 that state legislatures and institutions can limit transgender female athletes from participating in competitive women's sports teams.
 - The Court declined to answer whether states and institutions must limit transgender female athletes from participating in competitive women's sports teams.
 - However, the administration continues to interpret and enforce Title IX as requiring the prohibition of transgender female athletes even when there is no state law limiting their participation.
- Also held that Title IX's definition of "sex" means "biological sex" based on the legislative history of the statute.

What is Antisemitism?

- The Kansas Legislature and the Federal Government use the definition of Antisemitism created by the International Holocaust Remembrance Alliance (IHRA):
 - “Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”
 - Kansas SB 44 (2025)
 - EO 13899 “Additional Measures to Combat Anti-Semitism” (Jan. 2025)

Antisemitism Enforcement

- In 2024, the Biden Administration's DOE launched investigations into several higher education institutions for alleged Title VI hostile environment harassment claims based on antisemitism
 - Brown, Columbia, Cornell, UPenn, Lafayette College, and Harvard.
- Since 2025, the current administration has launched multiple Title VI investigations, lawsuits, and settlement agreements for alleged antisemitic conduct within higher education institutions.
 - Investigations and Settlements with Columbia, Brown, Cornell, Northwestern, and UVA.
 - Ongoing Investigations and Litigation with Harvard and UCLA.

Immigration

- **Enforcement of immigration has been a priority of both Federal and State governments.**
- **Enforcement strategies for immigration have also led agencies and state legislatures to examine higher education policies and practices around international students.**

Immigration Enforcement in Higher Ed Settings

- DOJ sues states over in-state tuition for undocumented students (June 2026)
- Homeland Security Rule: “Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media” (July 2026)

Takeaways

- Engage in values-aligned ways in personal life
 - Community organizations
 - Voting

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Questions?

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