



TUETH KEENEY  
COOPER MOHAN JACKSTADT P.C.

# HIGHER EDUCATION LAW SEMINAR

**JUNE 12, 2025**  
**HOSTED BY STEPHENS COLLEGE**

**JUNE 13, 2025**  
**HOSTED BY SAINT LOUIS  
COMMUNITY COLLEGE**

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# 2025 HIGHER EDUCATION LAW SEMINAR PROGRAM SCHEDULE

**11:30 a.m. to 12:30 p.m.**

Current Issues in Professional Ethics  
Jim Layton and Veronica Potter

**12:30 p.m.**

Registration and Lunch

**1:00 p.m. to 1:10 p.m.**

Welcome and Introduction

**1:10 p.m. to 1:50 p.m.**

Legislative Update 2025  
Jim Layton and Shannon Orbe

**1:50 p.m. to 2:30 p.m.**

Contracting through Uncertainty  
Lisa Berns and Veronica Potter

**2:30 p.m. to 2:40 p.m.**

Refreshment Break

**2:40 p.m. to 3:25 p.m.**

Hot Topics in Immigration Law  
Melanie Keeney

**3:25 p.m. to 4:10 p.m.**

Title IX, Title VI, and Related Issues on Campus  
Kate Nash and Aigner Carr

**4:10 p.m. to 5:00 p.m.**

Navigating the Current Landscape – DEI and Institutional Risk  
Mollie Mohan and Sarah McConnell





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## ETHICS OPINIONS: SOURCE AND SIGNIFICANCE

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### Sources of ethics guidance

#### • Advisory Committee

- Rule 5.30(a) The Advisory Committee may give formal opinions as to the interpretations of Rules 4, 5, and 6 and the amendments or additions thereto. Formal opinions shall be binding. Formal opinions of the Advisory Committee shall be published in the Journal of The Missouri Bar after adoption thereof and on the website for this Court.

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### Sources of ethics guidance

- Jill A. Kanatzar, Chair (Kansas City)
- Jane A. Rackers, Vice-Chair (Jefferson City)
- David W. Ansley (Springfield)
- John Jay Benson (Kirksville)
- Gary D. Collins (Jefferson City)
- Ann Phillips Corrigan (St. Louis)
- Keith A. Cutler (Kansas City)

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Sources of ethics guidance

- Susan Kroeger (St. Louis)
- Levell D. Littleton (Clayton)
- Joan K. Miller (St. Louis)
- Dan R. Nelson (Springfield)
- Kirby Upjohn (Kansas City)


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Sources of ethics guidance

- “Recent” opinions
- Formal Opinion 128 (amended October 24, 2018): Nonrefundable Fees
- Prior:
  - 2 in 2009
  - 2 in 2008
  - 3 in 2006
  - 2 in 1990s


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Sources of ethics guidance

- Office of Legal Ethics Counsel: Informal Opinions
- An informal advisory opinion is just that – informal and advisory. It is nonbinding and is given for the guidance of the lawyer asking the question.


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## Sources of ethics guidance

- Although informal advisory opinions are nonbinding, OCDC will take an informal advisory opinion into consideration, to the extent it considers appropriate, when it relates to a complaint received on that lawyer.
- If the facts found by OCDC through investigation vary from the facts upon which the informal advisory opinion was based, it is less likely that OCDC will give much weight to the informal advisory opinion.

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## Sources of ethics guidance

- What is the difference between an informal advisory opinion and a formal opinion?
- Formal opinions are binding in disciplinary proceedings that occur after the formal opinion is issued.
- Formal opinions are subject to review by the Supreme Court when petitioned by any member of the bar who is substantially and individually aggrieved by the opinion. *Burgess v. State*, 342 S.W.3d 325, 329 fn 6 (Mo. Banc 2011). No formal opinion has been reviewed by the Supreme Court of Missouri, to date.

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## Sources of ethics guidance

- ABA
- Other states

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# RECENT ETHICS OPINIONS

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## Topics of recent opinions

- AI
- Advising constituents
- Redaction
- Reporting misconduct
- Listservs

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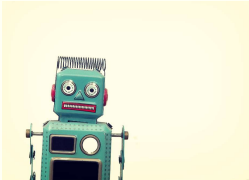
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## AI: Recent opinions

- Missouri 2024-11 (April 2024)
- ABA 512 (July 2024)



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## AI: Recent opinions

- ABA 512 (July 2024) -- summary
  - To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.

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## AI: Areas of concern

- Competency 4-1.1
- Confidentiality 4-1.6
- Rules of tribunal 4-3.4
- Professional independence 4-5.3
- Accuracy and content 4-5.3
- Supervisory responsibility 4-5.1
- Reasonableness of fees 4-1.5
- Candor to tribunal 4-3.3

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## AI: Competency

- 4-1.1. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- Issue: Knowing how and when to use AI

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## AI: Confidentiality

- 4-1.6(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by Rule 4-1.6(b).
- Issue: AI receives and keeps information, does not just answer questions.

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## AI: Confidentiality

- 4-1.6(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of the client.
- Issue: AI receives and keeps information, does not just answer questions.

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## AI: Confidentiality

- Comment 16 on 4-1.6: When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients...
- Issue: AI pulling information, not just giving it.

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## AI: Rules of tribunal

- 4-3.4(c) A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
- Issues:
  - Court may have an express AI rule;
  - AI may create filing that violates another rule.

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## AI: Professional Independence

- 4-5.4. Comment [1]: Rule 4-5.4 express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. ...
- Issue: Relying on AI can be surrendering professional independence of judgment.

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## AI: Accuracy and content

- 4-5.3
  - (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
  - (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer...
- Issue: AI must be supervised.

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## AI: Supervisory responsibilities

- 4-5.1 (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- Issue: AI must be supervised.

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## AI: Reasonableness of fees

- 4-1.5(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.
- Issue:
  - Billing for time actually spent
  - Billing for cost of AI v. overhead
  - AI use can save on fees, so failing to use it could mean fee is excessive.

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## AI: Candor to tribunal

- Rule 4-3.3(a) A lawyer shall not knowingly:
  - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
  - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - (3) offer evidence that the lawyer knows to be false. ...
- Issue: AI can produce false statements, authority, and evidence.

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## AI: Practical Tips

- Create an AI policy to specify:
  - which generative AI platforms can be used,
  - when generative AI can be used,
  - how it can be used,
  - who can use it, and
  - what information must be shared regarding its use.
- Appropriate training





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## AI: Practical Tips

- Read the terms and conditions and privacy policies for any AI tools before implementing.
- Know where your data will go, how it will be stored, and whether it can be shared.





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## Advising constituents

- ABA Formal Opinion 514 January 8, 2025: A Lawyer's Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization's Constituents





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## Advising constituents

- When advising an organization, lawyers necessarily provide their legal advice through constituents such as employees, officers, or board members. At times, the organization's decisions may have legal implications for its constituents who will be acting on the organization's behalf, including the constituents through whom the lawyer conveys advice. This situation implicates both the lawyer's duties to the organization client and the lawyer's professional obligations in interacting with the nonclient constituents of the organization.

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## Advising constituents

- The Model Rules of Professional Conduct set forth a general standard of competent representation under **Rule 1.1**, necessary communication under **Rule 1.4**, and candid advice under **Rule 2.1**. Where a lawyer—in-house or outside counsel—is giving advice to an organization client about future action of the organization, these provisions may require the lawyer to advise the organization when its actions pose a legal risk to the organization's constituents.

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## Advising constituents

- 4-1.1 Competence: A lawyer shall provide competent representation to a client. ...
- 4-2.1. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.

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Advising constituents

- 4-1.4 Communication
- (a) A lawyer shall:
  - (1) keep the client reasonably informed about the status of the matter;
  - (2) promptly comply with reasonable requests for information; and
  - (3) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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Advising constituents

- When an organization's lawyer provides advice to the organization about proposed conduct that may have legal implications for individual constituents, the constituents through whom the lawyer conveys advice may misperceive the lawyer's role and mistakenly believe that they can rely personally on the lawyer's advice. Rules **4.1**, **4.3**, and **1.13(f)** require an organization's lawyer to take reasonable measures to avoid or dispel constituents' misunderstandings about the lawyer's role.

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Advising constituents

- 4.1: Client-Lawyer Relationship (Competence, scope, diligence, communication, fees, confidentiality)
- 4.3: Advocate (Meritorious claims, expediting litigation, candor toward tribunal, duties to opposing party, impartiality an of tribunal, publicity, lawyer as witness, etc.)

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## Advising constituents

- 1.13(f) = 4.13(d)
- In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

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## Advising constituents

- An organization's lawyer may want to instruct or remind an organization's constituents about the lawyer's role early and often during the relationship, not only at times when constituents might rely to their detriment on a misunderstanding of the lawyers' role. Educating an organization's constituents who may receive the lawyer's advice in the future will lay the groundwork for later situations where lawyers may be advising the organization on matters with legal implications for the organization's constituents.

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## Hypothetical

- ABC University has a policy that allows transgender women to participate in women's athletic teams. PI Paul has just received a federal grant, and the grant agreement requires Paul to certify that ABC University is in compliance with all federal non-discrimination laws.
- PI Paul calls Larry Lawyer in the Office of General Counsel because he heard that the Dept. of Justice announced they will use the False Claims act to pursue claims against the recipients of federal funds that violate civil rights laws. PI Paul is worried he'll be sued.

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## Hypothetical

- Linda Lawyer in the Office of General Counsel is meeting with the Director of Human Resources to discuss revising language in employee contracts. Linda knows the Director of HR also has an employment contract that contains the language they are revising.

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## Redaction

Ethics counsel cannot interpret redaction requirements, but issues have arisen...



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## Redaction

- 2024-10
  - Need to preserve confidentiality of client's personal information even in filings by others.
- 2024-9
  - Need to know how to use PDF redaction software.

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## Redaction

- 2024-08
  - Can redact despite being uncertain whether rule requires redaction
- 2024-7
  - Can't redact the entire text of the pleading.

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## Redaction: Practical Tips

- Review the redaction rules when filing with the court.
- Create a protocol to use and consult when redacting that specifies what should be redacted and how it should be redacted.
- Appropriate training on PDF software to ensure proper redaction.

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## Reporting misconduct

- Rule 4-8.3. (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate professional authority.



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## Reporting misconduct

- 2025-02: timing: Can lawyer engaged in settlement discussions wait to report?
- Rule doesn't specify, but...
- "... it is generally presumed that the report should be done as promptly as possible. This requirement derives from the need to safeguard the public and the profession from future misconduct by the offending attorney."
- Reference to Comment [2] to Rule 4-8.3 "suggests that Lawyer may consider the adverse impact on the client when determining the timing of the report."
- Report should be made "reasonably promptly."

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## Reporting misconduct

- 2024-10; Duty to report failure to redact personal information?
- "Knows" is a defined term per Rule 4-1.0(f), and "denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances." If Lawyer A knows that Lawyer B violated the Rules of Professional Conduct such that the failure to properly redact raises a substantial question as to Lawyer B's honesty, trustworthiness, or fitness as a lawyer in other respects, then Rule 4-8.3(a) would require Lawyer A to inform the Office of Chief Disciplinary Counsel, which is the "appropriate professional authority" referenced in Rule 4-8.3(a).

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## Reporting misconduct

- 2024-10; Duty to report failure to redact personal information?
- Additionally, Rule 4-8.3(c) provides that Lawyer A is not required to disclose information to the Office of Chief Disciplinary Counsel otherwise protected by Rule 4-1.6, which addresses confidentiality of client information. If a report cannot be made without including such client confidential information, and Plaintiff will not consent to such disclosure, Lawyer A may not inform the Office of Chief Disciplinary Counsel as to the conduct of Lawyer B.

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## Listservs: Recent opinion

- ABA Formal Opinion 511R: Confidentiality Obligations of Lawyers Posting to Listservs



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## Listservs

- "Rule 1.6 prohibits a lawyer from posting questions or comments relating to a representation to a listserv, even in hypothetical or abstract form, without the client's informed consent if there is a reasonable likelihood that the lawyer's questions or comments will disclose information relating to the representation that would allow a reader then or later to infer the identity of the lawyer's client or the situation involved. A lawyer may, however, participate in listserv discussions such as those related to legal news, recent decisions, or changes in the law, without a client's informed consent if the lawyer's contributions will not disclose, or be reasonably likely to lead to the disclosure of, information relating to a client representation."

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## Listservs

- 5-1.6(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by Rule 4-1.6(b).

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# Questions?



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## Schedule

- **1:00 pm:** Welcome and Introduction
- **1:10 pm:** Legislative Update 2025
- **1:50 pm:** Contracting through Uncertainty
- **2:30 pm:** Refreshment Break
- **2:40 pm:** Hot Topics in Immigration
- **3:25 pm:** Title IX, Title VI, and Related Issues on Campus
- **4:10 pm:** Navigating the Current Landscape – DEI and Institutional Risk






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## Legislative Updates for 2025: A bill! A bill! We have a Higher Ed bill! And more!

Presented by:  
Jim Layton  
Shannon Orbe

Date:  
June 12 and 13, 2025



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## Legislative Round Up

- Higher Ed Bill (HB 419)
- Student associations
- Hazing
  - Federal: Stop Campus Hazing Act
  - State: Danny's Law
- Sunshine Law changes
- Immigration status reporting
- Proposition A Update

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House Bill 419

HIGHER ED BILL

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HB 419

- “Relating to [higher?] education”

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HB 419

- Tuition
- Activities
- Academics
- Holidays
- Funds
- Loan repayment Boots-to-business

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**HB 419: Tuition**

- Military
- Public safety officers and dependents
- Also in SB71


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**HB 419: Tuition**

- Resident* tuition for military
  - Military service personnel plus
    - spouses
    - unemancipated children under 24
  - Serving in Missouri National Guard
  - Serving in Reserve component of the Armed Forces of the United States


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**HB 419: Tuition**

- No tuition for:
  - Public safety officers and dependents


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## HB 419: Tuition

- Original:
  - educate but don't collect
  - Institute must process
- As passed:
  - Subject to funding
    - Appropriation
    - Donation
  - Process by DHEWD

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## HB 419: Tuition

- No tuition for:
  - Public safety officers and dependents

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## HB 419: Tuition

Eligible:

- "Public safety personnel", includes any
  - police officer,
  - firefighter,
  - paramedic,
  - telecommunicator first responder,
  - emergency medical technician, or
  - advanced emergency medical technician who is trained and authorized by law or rule to render emergency medical assistance or treatment;

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HB 419: Tuition

Eligible

- Must have
  - License from DHSS;
  - License from POST
  - Certificate from Division of Fire Safety, or
  - 911 certificate

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HB 419: Tuition

Eligible

- Must have
  - Verification of current full-time employment as public safety personnel
- Must not already have bachelors degree

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HB 419: Tuition

Eligible

- Must
  - Degree seeking in listed field
  - Provide documents to DHEWD
  - First apply for “all other forms of federal and state student financial aid”

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## HB 419: Tuition

### Eligible

- “legal dependent”
- “of public safety personnel with at least ten years of service”
- No bachelors degree
- Applied for other aid

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## HB 419: Tuition

“Tuition” the charges and cost of tuition as set by the governing body of an institution of higher education, including fees such as course fees, activity fees, technology fees, and mandatory fees charged by such institution to all full-time students as a condition of enrollment, but excluding the costs of room, board, books, and any other educational materials, equipment, or supplies.

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## HB 419: Tuition

- Funding?
  - “Public Safety Recruitment and Retention Fund”: “moneys appropriated by the general assembly or any gifts, donations, or bequests for the purpose of implementing the provisions of this section and section 173.2660 [dependents]”

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### HB 419: Tuition

- Not enough \$? Priorities:
  1. Highest crime rate / Most years of service
  2. Dependents of high crime rate or most years of service

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### HB 419: Activities

- Active-duty military can't be required to meet minimum number of practices
- Applies to statewide activities association
  - MSHSAA
  - MCCAC?

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### HB 419: Academics

- Also in SVB160
- PhD: MSU v. MU
- International Baccalaureate exam credit policy
  - Course credit for score of 4 or higher

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HB 419: Academics

- Immersive learning at Mo Southern


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HB 419: Holidays

- Veterans day at MU!


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HB 419: Funds

- MU’s “seminary fund”
  - Agreement with State Treasurer to establish separate account
  - Invest in government bonds
  - Withdraw interest
  - Annual report to Treasurer


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## HB 419: Loan repayment

- Was Health Professional Student Loan Repayment Program
  - Now Missouri State Loan Repayment Program Fund
- Had list of professions
  - Now at least 35% to primary care; rest to professions designated by DHSS, consistent with National Health Service Corps Loan Repayment Program or related.





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## HB 419: Boots to business

- “Books to business” 620-3250
  - Mentoring for veterans’ small businesses





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## STUDENT ASSOCIATIONS





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## SB160: Student associations

- 173.1555 and 173.1556
- Applies to state postsecondary educational institutions
- Protects "(2) "Belief-based student association," which "includes, but is not limited to, any political or ideological student association or any religious student association"

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## SB160: Student associations

- Bars "adverse actions"
  - "denies a belief-based student association any benefit available to other student associations or organizations or that otherwise discriminates with respect to any such benefit"

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## SB160: Student associations

- Bars "adverse actions"
- Because the association is political, ideological, or religious
- On the basis of viewpoint
- Based on the association's requirement that "leaders be committed to furthering the association's mission or that the association's leaders adhere to the association's sincerely held beliefs, sincere practice requirements, or sincere standards of conduct."

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## SB160: Student associations

- n/a if “substantial evidence” that “viewpoint would cause a material and substantial disruption to the educational environment or interfere with the rights of others on campus, in accordance with the United States Supreme Court’s decision in Healy v. James, 408 U.S. 169 (1972).”
- May assert as a claim or defense in a judicial proceeding.

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## HAZING

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## Stop Campus Hazing Act: Overview

- Signed into law by President Biden on 12/23/2024
  - Bipartisan support in Congress
  - Endorsement of over 50 national organizations
- Seeks to address hazing on campuses by amending the Clery Act to require tracking and reporting related to hazing and hazing prevention programs
- Main requirements:
  - Policies and Prevention Programs
  - Tracking and Reporting Hazing
  - Campus Hazing Transparency Report

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## Stop Campus Hazing Act: Timeline

- January 1, 2025:** Institutions should begin collecting hazing statistics to include in the annual security report.
- June 23, 2025:** Hazing policies must be in place.
- July 1, 2025:** Institutions must have a process for documenting violations of the institution's standards of conduct relating to hazing.
- December 23, 2025:** The Campus Hazing Transparency Report, which includes the violations that institutions begin documenting in July, must be publicly available. The Campus Hazing Transparency Report must be updated at least two times a year.
- October 1, 2026:** Hazing statistics will first be included in the 2026 annual security report (2025 statistics)



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## Stop Campus Hazing Act: Definitions

- Hazing = an intentional, knowing, or reckless act by a person against another person, regardless of that person's willingness to participate, as part of initiation into or maintenance of membership in a student organization that creates a risk of physical or psychological injury.
  - beating, causing sleep deprivation, coercing consumption of alcohol, or any act that violates other laws
- Definition applies to student organizations that are not officially recognized or sanctioned by the institution



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## Stop Campus Hazing Act: Statement on Policy and Prevention Program

- A statement of current policies relating to hazing, how to report incidents, the process used to investigate, and information on applicable local, State, and Tribal laws on hazing
  - Missouri law § 578.365 hazing statute
- A statement of policy regarding prevention and awareness programs related to hazing
  - Description of research-informed campus-wide prevention programs designed to reach students, staff, and faculty





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## Stop Campus Hazing Act: Tracking and Reporting

- Occurring on campus, in or on non-campus buildings or property, and on public property → reported to campus security authorities or local police agencies
- Tracked per incident → if a single person commits more than one act and the time and place separating those acts are insignificant, then it should be tracked as one incident.
- Campuses must start tracking hazing incidents as of January 1, 2025, to include in their 2025 ASRs.

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## Stop Campus Hazing Act: Campus Hazing Transparency Report

- Institutions must create, publish, and regularly update a Campus Hazing Transparency Report summarizing findings concerning any student organizations found to be in violation of hazing policies
- Being collecting data related to hazing incidents on July 1, 2025
- Make report available online no later than December 23, 2025
- Update report at least 2 times a year
- Publish report online
  - Campus Transparency Report
  - Statement notifying public of the availability of hazing statistics, including a link to the report
  - Information about institution's policies related to hazing and applicable local, State, and Tribal laws

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## Stop Campus Hazing Act: Campus Hazing Transparency Report

- Report must include:
  - Name of student org
  - General description of violation (including whether it involved alcohol or drugs)
  - Findings of the institution
  - Any sanctions imposed
  - Date(s) of the incident
  - Dates of state and end of the investigation
  - Dates of notice to student org of the finding
- Should NOT contain any personally identifiable information about any individual student

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## Stop Campus Hazing Act: Implementation

- Update hazing policy to comply with SCHA
- Update processes related to Clery Act Report
- All campus security authorities should be trained on the definition of hazing and to report hazing incidents like other Clery crime statistics.
- Consult your Tueth Keeney lawyer for questions and guidance





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## Danny's Law: Missouri's Anti-Hazing Statute

- § 578.365 RSMo.
- Applies to
  - private and public colleges and universities
  - actions on or off campus



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## Danny's Law: Missouri's Anti-Hazing Statute

- Hazing definition expanded to protect current and former members
- Excludes a person who:
  - Is present and sees need for medical assistance AND
  - Is the first person to call 911 or campus security and report AND
  - Provides own ID AND
  - Remains on scene with person needing assistance.



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# SUNSHINE LAW

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## HB 145: Sunshine Law

- Fee collection changes - § 610.026
- Current: “Payment of such copying fees may be requested prior to the making of copies.”

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## HB 145: Sunshine Law

- New:
  - “Payment of fees may be requested prior to fulfilling the request”
  - May deem request withdrawn if no payment within 90 days (or 150 if >\$1000)
  - Must include that in notice
  - If renew request w/in 6 months, may request original fees “in addition to any allowable fees necessary to fulfill the subsequent request.”

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## IMMIGRATION STATUS REPORTING

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### HB 495: Immigration status reporting

- 43.505.3. Every law enforcement agency in the state shall:
- (2) Submit [to DPS on DPS-prescribed forms] ] any other crime incident information which may be required by the department of public safety, *including information pertaining to the citizen or immigration status of any person arrested for an offense that is reportable under section 43.506*

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### HB 495: Immigration status reporting

- 43.506: felonies; class A misdemeanors; all violations for driving under the influence of drugs or alcohol; any offense that can be enhanced to a class A misdemeanor or higher for subsequent violations; and comparable ordinance violations consistent with the reporting standards established by the National Crime Information Center, Federal Bureau of Investigation, for the Federal Interstate Identification Index System; and all cases arising under chapter 566 [sexual offenses].

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# PROPOSITION A

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## Missouri's Proposition A

- Passed by nearly 60% approval in November 2024 election
- Incremental increases in the minimum wage up to \$15/hr to be adjusted based on CPI every year after 1/1/26
- Earned Paid Sick Time
- HB 567 passed
  - Allows minimum wage to increase to \$15/hr by 1/1/26 but halts further increases
    - Increase minimum wage will apply to public employees now
  - Eliminates Earned Paid Sick Time provisions
- Presented to Gov. Kehoe for signature → effective August 28, 2025

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# QUESTIONS??

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**Contracting Through  
Uncertainty:  
Law, Policy, and Best  
Practices**

Presented by:  
Lisa J. Barnes  
Veronica Potter

Date:  
June 12 and 13, 2025

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**Uncertainty**

 **U.S. Department of Education**


**What to Know About Trump's Strategy  
Targeting Colleges' Grants and  
Contracts**

The novel approach is targeting billions of dollars for  
higher education for years to come.

HOME / ABOUT US / NEWSROOM / PRESS RELEASES

**PRESS RELEASE**


**DOJ, HHS, ED, and GSA Announce Initial Cancellation of Grants and  
Contracts to Columbia University Worth \$400 Million**

 **U.S. Department of Education**


HOME / ABOUT US / NEWSROOM / PRESS RELEASES

**PRESS RELEASE**

**U.S. Department of Education Cancels Divisive and Wasteful  
Grants under the Comprehensive Centers Program**

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## Uncertainty

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## Uncertainty

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## Agenda

- Background on contracts
- Considerations and best practices for contracting in times of uncertainty
- Federal funding

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# CONTRACTS

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## What is a Contract?

- A binding, typically written\* agreement between the college or university and an individual or entity.
- Contract, Agreement, Letter of Agreement, Memorandum of Understanding . . . .
- Does the title make a difference? – No!
- What does make a difference? – Do you want the agreement to be enforceable at law?
- *\*not always*



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## Purpose of the Contract

- Establish clear, mutually agreed-upon terms
- Create and maintain good relationships between the parties
- Prevent disagreements that lead to litigation
- Provide for efficient and economical operation
- Promotes fiscal stability




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## Important Considerations

- Institutional leadership can change
- New Presidents and/or CFOs may be hired
- Board composition may change due to elections or otherwise
- Contracts may outlast the terms of the administrator and Board members who negotiated and/or approved the contracts
- Important to have unambiguous, legally-binding contracts that properly protect financial and legal interests of institutions of higher education and the parties that contract with them

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## Contract Elements

- Acceptance – agreement to the specific offer
- Offer – goods, service, or other promise
- Legal capacity to contract – especially by the college or university, also by other party (entity or person)
- Lawful subject matter – can't agree to rob a bank
- Mutual agreement – importance of essential terms
- Valuable consideration – the promise to do or provide something that is not already required
- Written agreement – required by Missouri law for public entities; recommended for all entities.

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## Missouri Law – Public Entities

- If your institution is a Missouri political subdivision, be aware of RSMo. 432.070 –
  - Section 432.070 – per this statute all contracts must –
    - Be in writing and signed by the board president (should be attested by secretary, required in some cases); and
    - Set forth all essential terms of the contract – money, length of contract, performance required, ability to terminate, everything to be enforced!\*
- **\*Remember: Oral promises are *not* enforceable**

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Missouri Law – Public Entities

- For public institutions - don't forget the Missouri Open Meetings Act!
- All contracts with public institutions are open records – once approved by the institution
- Includes:
  - Employment contracts (including President and other administrators)
  - Vendor contracts
  - Separation agreements
  - Settlement agreements
  - All contracts, MOUs, agreements, etc. (remember the second slide in this presentation!)
- Never include anything in any contract (employment or otherwise) that you would not want the public to see

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Missouri Law – Public Entities

- E-Verify → “As a condition for the award of any contract or grant in excess of five thousand dollars by the state or by any political subdivision of the state to a business entity . . . the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.”
- Mo. Rev. Stat. § 285.530.1

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Missouri Law – Public Entities

- Anti-Discrimination Against Israel Act → “A public entity shall not enter into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel....”
- Public entity defined as the state or any political subdivision, including all boards, commissions, agencies, institutions, authorities and bodies politic and corporate of the state created by or in accordance with state law or regulations.
- Does not apply to contracts with a total potential value of less than \$100,000 or to contractors with fewer than 10 employees
- Failure to comply = contract void as against public policy
- Mo. Rev. Stat. § 34.600




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## Law and Policy Considerations

Consequences of not complying with the requirements of law and policy:

- May not be able to enforce contracts if not approved as required by law or if terms not consistent with law,
- May still have to honor unauthorized contract if pattern and practice of permitting unauthorized signatures.
- An open and continuing invitation to litigation, the cost of which most likely is not covered by insurance and will exceed the value of the contract!
- Private institutions – while not subject to RSMo. 432.070, are subject to their own policies.

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## Law and Policy Considerations

- Many are unknown to the Board – some to administrators
- Most are unwise – not a good use of institution resources
- Some are illegal – permit activities not permitted by law or policy

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## Planning Before the Contract

- Review existing or comparable contracts for the good, the bad, and the ugly
- Authority Questions
- Dollar Amount Thresholds
- Procurement / Bidding Policies
- Signatures






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## “Hot Items” in Contracts

- Mandatory Mediation / Arbitration**
  - Voluntary mediation may be acceptable in some situations; but
  - Mandatory mediation and arbitration are NOT
  - There is no appeal from arbitration (except in the rarest of circumstances)
- Statute of Limitations**
  - Established by state law
  - Do not attempt to alter by contract
  - Vendors often limit this in the fine print.

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## “Hot Items” in Contracts

- Venue Selection and Choice of Law**
  - Must be home state law for public institutions; for private institutions, home state law is also important
  - With venue in the county and state and federal venue in which the institution is located (limited exceptions for Cole County for Missouri public entities)
- What happens if this is not changed?**
  - Very expensive trips to far away places for the institution's attorneys
  - Local counsel to assist in the “foreign” jurisdiction
  - Competing lawsuits in two jurisdictions

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## “Hot Items” in Contracts

- Indemnification**
  - Do require vendor to indemnify institution for claims brought against the institution
  - Do not agree to indemnify vendor - Requires institution to indemnify vendor for claims asserted against vendor
  - For publics, agreement to indemnify for claims barred if asserted against institution may not be covered by insurance
  - Agreements between two Missouri public entities should remain silent on indemnification or acknowledge the absence of indemnification by both parties

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## “Hot Items” in Contracts

- **Insurance**
  - Should be required in every applicable circumstance
- **Tariff Clauses**
  - Vendor right to increase prices due to tariffs or otherwise
  - Often in vendor contracts previously, now almost universal







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## “Hot Items” in Contracts

- **Prevailing Party Attorneys Provision**
  - In event of contract dispute, requires losing party to pay prevailing party's attorneys' fees and litigation costs
  - Good for institutions that prevail
  - Not good for institutions that lose – and may not be covered by insurance







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## “Hot Items” in Contracts

- **Boilerplate “Gotchas”**
  - Look at the links in the initial document
  - There are often pages and pages of Terms and Conditions
  - The “Front Page Contract” may look fine, but it may also say that to the extent it conflicts with the Terms and Conditions, the Terms and Conditions will prevail – and that is where the mischief lies!





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Updates to Contracts

- Be aware that old construction bid and contract forms may not be updated to comply with Trump Administration Requirements.
- Executive Order 11246 has been rescinded by President Trump.

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Additional Considerations

- Remember the goal!!
- Contract formation is not an exercise in ambush – by either party.
- The purpose is to **promote agreement and establish clear understanding**.
- It is a template for **good business and interpersonal relationships**.
- You are likely to work with vendors, employees, and other contractual parties for a long time

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## False Claims Act

- May 19, 2025 – Dept. of Justice announced Civil Rights Fraud Initiative
- Committed to enforcing federal civil rights laws through “vigorous enforcement of the False Claims Act, 31 U.S.C. § 3729 et seq”

PRESS RELEASE

### Justice Department Establishes Civil Rights Fraud Initiative

Monday, May 19, 2025

Share

For Immediate Release  
Office of Public Affairs

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## False Claims Act

- The False Claims Act ...is implicated when a federal contractor or recipient of federal funds **knowingly violates civil rights laws**- including but not limited to Title IV, Title VI, and Title IX, of the Civil Rights Act of 1964- and falsely certifies compliance with such laws. Accordingly, a university that accepts federal funds could violate the False Claims Act when it **encourages antisemitism, refuses to protect Jewish students, allows men to intrude into women's bathrooms, or requires women to compete against men in athletic competitions**. Colleges and universities cannot accept federal funds while discriminating against their students.

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## False Claims Act

- The False Claims Act is also implicated whenever federal-funding recipients or contractors certify compliance with civil rights laws while knowingly engaging in racist preferences, mandates, policies, programs, and activities, including through **diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity, or national origin**.

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## False Claims Act

- **What is the False Claims Act?**
- A person who knowingly submits, or causes to submit, false claims to the government is liable for three times the government's damages, plus a penalty.
- Requires:
  - Knowledge,
  - Materiality,
  - Falsity.

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## False Claims Act

- Litigation can be brought by the government, or an individual as a *qui tam* suit.
- Individual gets portion of recovery, and attorney's fees and costs
- DOJ memo is inviting *qui tam* suits.



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## False Claims Act

- Review your existing programs/policies on issues targeted for FCA enforcement:
  - Antisemitism
  - Transgender students
  - DEI

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## Grant Funded Positions

- If any grant funded positions have employment contracts, include contract provision that allows the institution to terminate early if the grant funding is cancelled/revoked.



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Refreshment Break





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Immigration Issues in  
Higher Education  
Hot Topics!

Presented by:  
 Melanie Gurley Keeney

Date:  
 June 12 and 13, 2025  
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Agenda for Today

- Immigration Issues Impacting ...
  - International Students
  - Faculty and Staff
  - Compliance and Enforcement
  - Travel Restrictions
  - Entry to USA



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# New Administration – New Policies

- International Students and Scholars (F-1, J-1, M-1)
- What has been happening and what can we expect?
- **Visas versus Status**
  - Termination of SEVIS records
  - Revocation of Visas
  - Litigation Outcomes
  - Current ICE Policy

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**Use when...**

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# Litigation over SEVIS Terminations






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Foreign Affairs Manual

9 FAM 403.11-3(A) (U) When You May Revoke Visas

(CT-VISA-1948; 03-07-2024)

(U) There are four circumstances under which you may revoke a visa:

(1) Unavailable

(2) (U) The individual is not eligible for the visa classification (this includes ineligibility under INA 214(b));

(3) (U) The visa has been physically removed from the passport in which it was issued; or

(4) (U) The individual is subject to an IDENT Watchlist record in System Messages for an arrest or conviction of driving under the influence, previous five years, pursuant to 9 FAM 403.11-5(B) paragraph c, below.

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New Administration – New Policies

Case 4:25-cv-00175-AMM Document 13-1 Filed 04/28/25 Page 1 of 2

FOUO – FOR INTERNAL SEVP USE ONLY

Broadcast Message: SEVIS Notice – Policy Regarding Termination of Records

To: All SEVP Personnel

Date: April 26, 2025

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New York Times April 25, 2025

U.S. Restores Legal Status for Many International Students, but Warns of Removals to Come

Immigration officials signaled that the Trump administration would continue to pursue efforts to terminate the legal status of the students, despite a wave of legal challenges.

▶ Listen to this article - 4:36 min

🔗 Share full article

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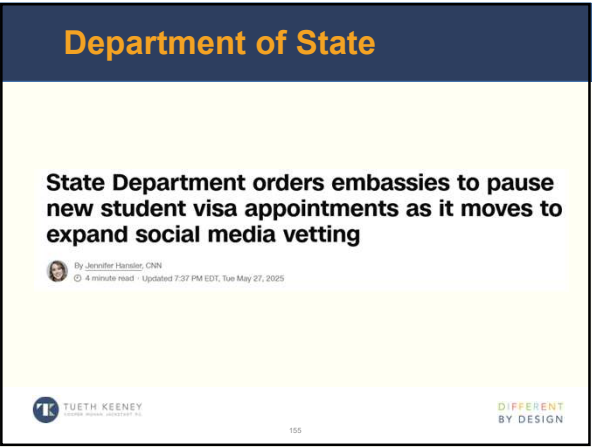
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### New Administration – New Policies

- Do International Students have First Amendment Rights?
- What is the law?
  - Competing Interests
- What is reality?




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### ICE Enforcement Related to Students

- ICE Authority
  - ICE Warrants/Subpoenas
  - Judicial Warrants/Subpoenas
  - ICE Detainers

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### Missouri Law- RSMo. Section 650.475

- Cooperation with ICE Enforcement
- 650.475. Prohibiting or restricting communication with federal authorities regarding citizenship or immigration, unlawful when — attorney general to issue opinion, when — rights of public employees. — 1. Notwithstanding any other provision of law, no government entity, political subdivision, or government official within the state of Missouri shall prohibit, or in any way restrict, any government entity or official from communicating or cooperating with the United States Bureau of Immigration and Customs Enforcement regarding the citizenship or immigration status, lawful or unlawful, of any individual.

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Missouri Law RSMO. Section 650.475 cont.

3. Notwithstanding any other provision of law, **no person or agency** within the state of Missouri shall prohibit, or in any way restrict, **a public employee** from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the United States Bureau of Immigration and Customs Enforcement;
- (2) Maintaining such information; or
- (3) Exchanging such information with any other federal, state, or local government entity.


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Missouri Law RSMO. Section 650.475 cont.

- 4. **Upon the complaint** of any state resident regarding a specific **government entity, agency, or political subdivision of this state** or prior to the provision of funds or awarding of any grants to a government entity, agency, or political subdivision of this state, any **member of the general assembly may request that the attorney general of the state of Missouri issue an opinion** stating whether the government entity, agency, or political subdivision has current policies in contravention of subsections 1 and 3 of this section.


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Missouri Law RSMO. Section 650.475 cont.

- 5. **No state agency or department shall provide any funding** or award any monetary grants to any government entity, agency, or political subdivision determined under subsection 4 of this section to have a policy in contravention of subsections 1 and 3 of this section **until the policy is repealed** or no longer in effect.


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## HB 495: Immigration status reporting

RSMo. Section 43.505.3. Every law enforcement agency in the state shall:

- (2) Submit [to DPS on DPS-prescribed forms] ] any other crime incident information which may be required by the department of public safety, *including information pertaining to the citizen or immigration status of any person arrested for an offense that is reportable under section 43.506*

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## New Administration – Employment Issues

- What is focus of New Administration in this area?
  - Compliance and Enforcement – I-9s, etc.
  - Work Authorization Issues – TPS
  - Enhanced Vetting
  - Other Visa Processing Issues
    - RFEs, etc.

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## New Administration – TPS

- What is TPS?
- Changes in TPS designation and impact on employer workforces
  - Venezuela
  - Haiti
  - Others
- What is an employer's obligation?

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## New Administration – TPS

- **ALERT:** On May 19, 2025, the U.S. Supreme Court, in a devastating 8-1 vindication of the Trump Administration and stinging indictment of judicial activism, granted the government's request for an emergency stay of Judge Edward Chen's order in *National TPS Alliance, et al., v. Kristi Noem et al.*, No. 3:25-cv-01766 (N.D. Cal. Mar. 31, 2025). Based on the Supreme Court's May 19 order, the erroneous March 31, 2025, district court order in case No. 3:25-cv-1766 is stayed pending the disposition of the government's appeal in the United States Court of Appeals for the Ninth Circuit. Thus, TPS for Venezuelans with April 3, 2025 documentation has terminated pursuant to Secretary of Homeland Security Kristi Noem's Feb. 5, 2025 decision to terminate TPS under the 2023 designation for Venezuela. On May 30, 2025, the district court in case No. 3:25-cv-1766 ordered that—pending resolution of the litigation—TPS beneficiaries who received TPS-related employment authorization documents, Forms I-797, Notices of Action, and Forms I-94 issued with October 2, 2026 expiration dates on or before February 5, 2025 will maintain that status, and their documentation will remain valid during the course of the litigation. **All TPS-related documentation with a validity date of October 2, 2026, received after February 5, 2025, is no longer valid and those individuals under the 2023 designation no longer have TPS.** Last Updated Date: 06/10/25

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## 2021 Designation of Venezuela for TPS (Venezuela 2021)

TPS Extended Through:	Sept. 10, 2025
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## 2023 Redesignation of Venezuela for TPS (Venezuela 2023)

TPS Extended Through:	April 7, 2025 TPS beneficiaries who received TPS-related documentation on or before February 5, 2025, with a validity date of October 2, 2026, will maintain that status and their documentation will remain valid pending resolution of the litigation in <i>National TPS Alliance, et al., v. Kristi Noem et al.</i> , No. 3:25-cv-01766 (N.D. Cal. Mar. 31, 2025) (pursuant to court order).
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## Temporary Protected Status Designated Country: Haiti

- Last Updated Date: 05/28/25
- ALERT: On Feb. 20, 2025, Secretary of Homeland Security Kristi Noem partially vacated the July 1, 2024, [notice](#) that extended and redesignated Haiti for Temporary Protected Status (TPS). The announcement amends the period of extension and redesignation of Haiti for TPS from 18 months to 12 months, with a new end date of Aug. 3, 2025, and makes a corresponding change to the initial registration period for new applicants under the redesignation, which will now remain in effect through Aug. 3, 2025

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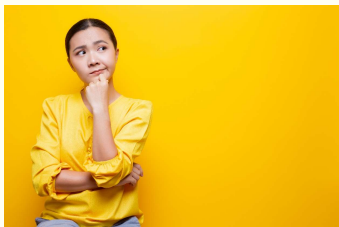
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## What does this mean for employers?



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## TRAVEL Ban and Restrictions



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## TRAVEL Bans and Restrictions




**Some visitors report extra scrutiny at US airports as Trump's new travel ban begins**





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## TRAVEL Ban and Restrictions

- The new proclamation that Trump signed last week applies to citizens of Afghanistan, Myanmar, Chad, the Republic of Congo, Equatorial Guinea, Eritrea, Haiti, Iran, Libya, Somalia, Sudan and Yemen.
- It also imposes heightened restrictions on people from Burundi, Cuba, Laos, Sierra Leone, Togo, Turkmenistan and Venezuela who are outside the U.S. and don't hold a valid visa.



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## Other Employment Issues

- I-9 Compliance
  - I-9 Response Teams
  - Self-audits
- CBP – Entry Issues
  - Search of Electronic Devices
- Visa Processing Issues



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# QUESTIONS???

[illegible]

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[mkeeney@tuethkeeney.com](mailto:mkeeney@tuethkeeney.com)

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# Title IX, Title VI, and Related Issues on Campus

Presented by:  
Kate L. Nash  
Aigner S. Carr

Date:  
June 12 and 13, 2025

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## AGENDA

- Title IX
  - Status of Regulations
  - Evolving Issues
  - Related State-Level Considerations
  - Takeaways
- Title VI
  - Evolving Issues
  - Takeaways






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## Title IX

“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 of the Education Amendments of 1972

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## History of Recent Title IX Regulations

- May 2020 – Trump administration released 2020 regulations.
- August 2020 – 2020 regulations went into effect.
- July 2021: Dept. of Education released Title IX Q&A (Biden Administration).
- June 2022- September 2022: NPRM published - 240,000+ public comments received.
- April 2024: 2024 regulations released.
- August 1, 2024: Effective date for regulations under Biden.




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But wait...



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## Challenges to 2024 Title IX Regulations

- Eight lawsuits were filed challenging the 2024 Title IX regulations
- 26 states involved in lawsuits
- Title IX regulations enjoined in 21 states by July 25, 2024

Legal challenges to Biden's Title IX rule and their status  
26 states are challenging the Biden administration rule that expands Title IX protections to ban discrimination in schools based on gender identity and sexual orientation

Rule challenged Rule on hold No legal challenge

Search by state...



SOURCE: Education Week reporting

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## Challenges to 2024 Title IX Regulations

### Some of the Plaintiffs' Claims About Regulations:

- Require schools to "ignore biological sex in favor of self-professed 'gender identity'"
- Gut athletic opportunities that Title IX was designed to provide to biological women and girls
- Destroy privacy protections for women and girls in restrooms, locker rooms, shower facilities, and overnight accommodations
- Preempts numerous State laws
- Silences/threatens individuals who do not share the Department's view of sex (**First Amendment!!!**)
- Deny federal funding to schools that do not adhere to those views

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## Challenges to 2024 Title IX Regulations

- **January 9, 2025:**
  - Federal judge vacates 2024 Title IX regulations nationwide.
  - redefining “sex” to include gender identity exceeded the Department of Education’s authority; interpretation of *Bostock* too broad.
  - Infringement on First Amendment rights of others
- **Trump administration opted not to defend the rule, leaving it blocked.**




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## What does this mean?

The 2020 Title IX regulations are back in effect!






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## TITLE IX ISSUES IN 2025

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Title IX in 2025

**"Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government"**  
(Executive Order Jan. 20, 2025)

"...ideologues who deny the biological reality of sex have increasingly used legal and other socially coercive means to permit men to self-identify as women and gain access to intimate single-sex spaces and activities designed for women, from women's domestic abuse shelters to women's workplace showers... It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable."


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January 20, 2025 Executive Order


**Sec. 2. Policy and Definitions.**

(a) "Sex" shall refer to an individual's immutable biological classification as either male or female.

(b) "Women" or "woman" and "girls" or "girl" shall mean adult and juvenile human females, respectively.

(c) "Men" or "man" and "boys" or "boy" shall mean adult and juvenile human males, respectively.


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January 20, 2025 Executive Order


**Sec. 2. Policy and Definitions.**

(d) "Female" means a person belonging, at conception, to the sex that produces the large reproductive cell.

(e) "Male" means a person belonging, at conception, to the sex that produces the small reproductive cell.

(g) "Gender identity" reflects a fully internal and subjective sense of self, disconnected from biological reality and sex... does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex.


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## January 20, 2025 Executive Order

### Sec. 3. Recognizing Women Are Biologically Distinct From Men.

(f) The prior Administration argued that the Supreme Court's decision in *Bostock v. Clayton County* (2020), requires gender identity-based access to single-sex spaces under . . . Title IX. . . The Attorney General shall therefore immediately issue guidance to agencies to **correct the misapplication** of *Bostock v. Clayton County* (2020) to sex-based distinctions in agency activities...

(g) Federal funds **shall not be used to promote gender ideology**. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.

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## February 5, 2025: Executive Order

### "Keeping Men Out of Women's Sports" (EO, Feb. 5, 2025)

"...many educational institutions and athletic associations have allowed men to compete in women's sports. This is demeaning, unfair, and dangerous to women and girls, and denies women and girls the equal opportunity to participate and excel in competitive sports."

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## February 5, 2025: Executive Order

### "Keeping Men Out of Women's Sports"

"Under Title IX... educational institutions receiving Federal funds cannot deny women an equal opportunity to participate in sports...it is the policy of the United States to **rescind all funds from educational programs that deprive women and girls of fair athletic opportunities**, which results in the endangerment, humiliation, and silencing of women and girls and deprives them of **privacy**. It shall also be the policy of the United States to **oppose male competitive participation in women's sports more broadly**, as a matter of safety, fairness, dignity, and truth."

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Enforcement of Title IX in 2025

- February 2025: Department of Education opens investigations into: 1) San Jose University; 2) University of Pennsylvania; 3) Massachusetts Interscholastic Athletic Association
- March 2025: Trump administration freezes \$175 million in federal funding for the University of Pennsylvania due to university's past support for transgender athlete Lia Thomas.
- April 2025: Departments of Education and Justice establish a joint team to investigate Title IX violations.
- May 2025: President Trump threatens to withhold federal funding from California over its policy allowing transgender athletes in women's sports.

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Issues in Maine

**February 2025:**

- Maine declares it will continue to allow transgender athletes to compete in girls' sports
- Maine State Rep. Laurel Libby shares a Facebook post of a Greely High School transgender student winning the girls' pole vault; Libby is subsequently censored by Maine House of Reps (no voting or speaking on house floor)
- OCR announces investigation of Maine Dept of Ed and Maine School Administrative District 51 (Greenly High School) over alleged TIX violations of denying female athletes access to female only activities
- The U.S. Department of Agriculture announces compliance review of the University of Maine System due to noncompliance with the Feb. 2 executive order

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Issues in Maine

**March 2025:**

- Rep. Libby files lawsuit claiming censure violates her constitutional rights
- The USDA temporarily freezes, then restores University of Maine System funding; University System later found to be in compliance with Title IX.
- OCR finds that Maine Department of Education, Maine Principals' Association, and Greely High School violated Title IX by denying female student athletes an equal opportunity to participate in athletics.
- MSAD 51 refuses to ban transgender athletes from competing in girl's sports; says it will continue to follow state law and the Maine Human Rights Act (MHRA).
- OCR issues final warning to Maine Dept. of Ed.; refers matter to Dept. of Justice

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## Maine Human Rights Act

- Explicitly include definitions of "gender identity" and "sexual orientation"
- § 4591. Equal access to public accommodations

"The opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, **sexual orientation or gender identity**, age, physical or mental disability, religion, ancestry or national origin is recognized as and declared to be a civil right."

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## Issues in Maine

April 2025:

- Maine Republican lawmakers introduce two bills to amend Maine Human Rights Act: 1) students assigned male at birth cannot participate in girls or women's sports; 2) removal of the term "gender identity" from the Act.
- The USDA announces it is freezing funding for certain administrative and technological functions in Maine due to violation of Title IX
- Maine Attorney General Aaron Frey files suit against USDA for withholding funding used to feed children and disabled adults in schools, daycares and other programming
- Maine AG and Department of Education refuse to sign Resolution Agreement to issue a directive forbidding schools from allowing transgender students who were assigned male at birth to participate in girls' sports

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## Issues in Maine

April 2025:

- A federal judge in Maine orders the USDA to immediately unfreeze and release any federal funding withheld; also bars the USDA from interfering with future funding without complying with the legally required procedure.
- The School Board for MSAD 70 chooses to align with Title IX policy by unanimous Board approval
- The U.S. Department of Justice announces a civil lawsuit against the Maine Department of Education for "failure to comply with federal law."
- Lawsuit seeks injunction against Maine, retroactive withdrawal of funds, titles awarded to female athletes who competed against the biological males.
- Federal Judge upholds censure of Maine Rep. Libby until she apologizes for FB post

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## Issues in Maine

**May 2025:**

- Maine reaches a settlement agreement with the USDA to restore USDA funding to the state.
- Maine AG's Office responds to DOJ lawsuit over Title IX compliance issue; lawsuit states that it has at least seven legal defenses against the claims made by the DOJ.
- Fifteen states, led by the Attorney General of West Virginia, file an amicus brief with the U.S. Supreme Court in support of Rep. Laurel Libby re the censure matter.
- The U.S. Supreme Court rules that Rep. Laurel Libby must be allowed to vote in the Maine House while her censure lawsuit plays out.

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## STATE LEVEL CONSIDERATIONS




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## Missouri’s Transgender Athlete Statute

- **Section 163.048**, RSMo – prohibits biological male athletes from competing on female athletic teams
- Defines “sex” as “the two main categories of male and female into which individuals are divided based on an individual’s reproductive biology at birth and the individual’s genome.”

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## Missouri's Transgender Athlete Statute

- “no private school, public school district, public charter school, or public or private institution of postsecondary education shall allow any student to compete in an athletics competition that is designated for the biological sex opposite to the student's biological sex as correctly stated on the student's official birth certificate...if the student's official birth certificate is unobtainable, another government record.”
- Sex must be entered “at or near” time of birth; or
- Modified to correct a “scrivener's error” in the biological sex.



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## Missouri's Transgender Athlete Statute

- Schools “may allow a female student to compete in an athletics competition that is designated for male students if no corresponding athletics competition designated for female students is offered or available.”
- Violations may result in loss of state aid.
- Parents or eligible students “shall have a cause of action for injunctive or other equitable relief, in addition to attorney's fees.”
- Statute expires August 28, 2027.



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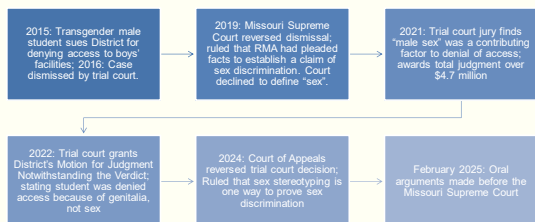
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## R.M.A. v. Blue Springs



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## R.M.A. v. Blue Springs

- The Missouri Supreme Court issued a decision on June 10, 2025.
- It adopted a definition of “sex” for purposes of sex discrimination claims in places of public accommodations, holding “the plain and ordinary meaning of ‘sex’ refers to one’s biological classification as male or female.”

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## Takeaways

- “Gender identity” different from a “sex stereotyping” claim which is explicitly covered and prohibited in *Bostock*
- “Sex stereotyping” claims remain viable under state non-discrimination statutes as well.
- Under state law, RMA has determined now clearly defined “sex” for purpose of POPA analysis.

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## Takeaways

- Trump administration has demonstrated its interest and prioritization of transgender issues
- Increased risk of legal action at the state and federal level for noncompliance of transgender athlete statute and executive orders
- Review policies and practices to understand interaction with federal and state guidance and law.

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## TITLE VI ISSUES IN 2025

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## Title VI

“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..”

Title VI of the Civil Rights Act of 1964 42 U.S.C. § 2000d

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## History of Title VI

- Pre-1960s: Widespread racial segregation in public institutions resulted in inequity of schools for minorities
- Purpose was aimed at combating indirect support for discrimination; instrument used to implement integration of public schools
- Interpretation of Title VI was subsequently expanded to include “disparate impact” cases

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## Title VI

- Applies to any educational institution—public and private—that receives federal funding
- Enforced by OCR; DOJ oversees
- Penalty is loss of federal funding
- Agencies must ensure compliance before and after funding approval

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## Students for Fair Admissions v. Harvard (SFFA)

Students for Fair Admissions (SFFA) sued Harvard University and UNC-Chapel Hill, alleging:

- Harvard discriminated against Asian American applicants through racial balancing and subjective personal ratings.
- Universities' use of race in admissions was **not narrowly tailored** to serve a compelling interest.

### Issue Presented:

- Whether race-conscious admissions policies violate EPC, 14<sup>th</sup> Amendment, and Title VI.

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## Students for Fair Admissions v. Harvard (SFFA)

The Court acknowledged that diversity in education is a compelling interest (as previously recognized), but found that the methods used by Harvard and UNC were:

1. Not narrowly tailored, and
2. Unconstitutionally vague and subjective.

Under SFFA, admissions systems that factor race directly or indirectly are impermissible.

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## Title VI in 2025

### OCR Dear Colleague Letter (DCL)

- Issued on Feb. 14, 2025
- Outlines OCR's interpretation of the Supreme Court's decision in *SFFA*.
- Interprets institutions' obligations more broadly than Supreme Court, and alludes to additional institutional practices (beyond admissions) that the Department interprets as unlawful
- Followed by March 1, 2025 FAQs

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## Feb. 14, 2025 Dear Colleague Letter

The DCL states that institutions receiving federal funds must cease using race, color, or national origin as factors in decisions related to:

- Admissions
- Hiring and promotion
- Financial aid and scholarships
- Discipline and housing
- Graduation ceremonies and other aspects of student and campus life




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## Feb. 14, 2025 Dear Colleague Letter

### Challenges to DCL – Ongoing Litigation

- Multiple organizations, including the National Education Association (NEA), the American Federation of Teachers (AFT), and the NAACP, filed lawsuits challenging the DCL.
- They argued that DCL guidance overreaches by extending the *SFFA* ruling beyond admissions and infringes on free speech and equal protection rights.
- On April 24, 2025: Federal district courts in New Hampshire, Maryland, and D.C collectively ruled issued rulings temporarily blocking the Department of Education from enforcing the DCL and related directives, citing potential legal and constitutional violations.

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## Title VI in 2025

Executive Orders:

- **"Additional Measures to Combat Anti-Semitism"** – reiterates intention to specifically protect Jewish students (Jan. 29, 2025)
- **"Restoring Equality of Opportunity and Meritocracy"** - revokes prior presidential approvals of specific U.S. Department of Justice (DOJ) Title VI regulations that supported the use of disparate-impact liability – a legal theory holding entities accountable for practices that disproportionately affect protected groups, even without discriminatory intent (April 23, 2025)
- **"Reinstating Common-Sense School Discipline Policies"** - criticizes previous DCLs and any practice of engaging in or promoting disparate impact or equity-based discipline (April 23, 2025)



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## April 23, 2025 Executive Order

**"Restoring Equality of Opportunity and Meritocracy"**

Section 1. Purpose "A bedrock principle of the United States is that all citizens are treated equally under the law. This principle **guarantees equality of opportunity, not equal outcomes**. It promises that people are treated as individuals, not components of a particular race or group. It **encourages meritocracy and a colorblind society**, not race- or sex-based favoritism...

A key tool of this movement is **disparate-impact liability**, which holds that a...presumption of unlawful discrimination exists where there are any differences in outcomes in certain circumstances among different races, sexes, or similar groups, even if there is no facially discriminatory policy or practice or discriminatory intent involved..." **Disparate-impact liability all but requires individuals and businesses to consider race and engage in racial balancing to avoid potentially crippling legal liability...**"



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## Disparate Impact Theory

- A neutral policy or practice has a disproportionate and adverse effect on individuals of a certain race, color, or national origin, as compared to individuals of a different race, color or national origin.
- Applies when anyone experiences a **disproportionate harm** based on race, including White students.
- Focus is on outcome rather than intent, and **discriminatory intent is not required**.



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## Evolution of Disparate Impact Theory

Title VI regulation - **34 C.F.R. § 100.3(b)(2)** prohibit practices that have discriminatory effect without intent:

- "A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services... will be provided... may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which **have the effect** of subjecting individuals to discrimination because of their race, color, or national origin..."

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## Previous View of Title VI

- **2014 Dear Colleague Letter** encouraged the use disparate impact theory to address racially discriminatory practices;
- It also and provided a three-part inquiry.
- OCR investigations from 2023 and 2024 found that institutions had engaged in discrimination based on disparate impact analysis.

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## Disparate Impact Theory Takeaways

- Title VI Prohibits intentional discrimination
- Historically, disparate impact under Title VI regulations could form the basis for injunctive relief (but not monetary damages)
- Courts distinguished enforcement of the statute (which requires intent) and the regulations (which prohibit unjustified disparate impacts)
- The Trump Administration has rescinded prior guidance recognizing enforcement of disparate impact theory altogether

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## General Takeaways

- Remember the Civil Rights Fraud Initiative Memo re-emphasize the Trump Administration's priorities under Title IX and VI
- Be aware of the potential for DOJ investigations and the consequences of FCA violations
- Institutions should review existing legal requirements as well as administrative priorities when engaging in risk assessment.
- Educate employees about civil rights requirements and the implications of noncompliance.

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## QUESTIONS???

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## Navigating the Current Landscape: DEI and Institutional Risk



Presented by:  
Mollie G. Mohan  
Sarah P. McConnell

Date:  
June 12 and 13, 2025

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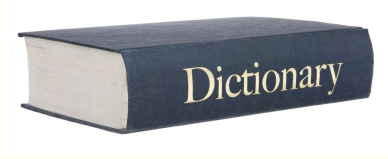
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## Employment Law Basics

Cannot **take action** against an employee based on a **protected characteristic** or **protected activity**





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## Anti-Discrimination Laws

- **Federal Laws**
  - Title VII of the Civil Rights Act
  - Americans with Disabilities Act
  - Age Discrimination in Employment Act
  - Pregnancy Discrimination Act and PWFA
  - Equal Pay Act
  - Genetic Information Non-Discrimination Act
- **State Law**
  - Missouri Human Rights Act (MHRA)



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## Protected Characteristics

- Title VII
  - Race
  - Color
  - National origin
  - Religion
  - Sex\*

- MHRA
  - Age (40-69 only)
  - Ancestry
  - Disability



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## Adverse Action

- Tangible employment action → Hiring/firing, failure to promote, significant changes impacting terms, conditions, or privileges of employment status
- Recent cases → “any unfair treatment”
- Hostile work environment
  - Discrete acts in disguise

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## Disparate Impact

- Disparate treatment vs. disparate impact
  - Disparate treatment → intentional discrimination, employer acted with discriminatory motive
  - Disparate impact → otherwise neutral policies which disproportionately harm particular group






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## Disparate Impact

- April 23, 2025 Executive Order
  - Disparate impact “undermines national values” and “runs contrary to equal protection”
  - Federal agencies are directed to “deprioritize enforcement” of laws, regulations, etc. that “include disparate-impact liability”
  - EEOC directed to issue guidance regarding “appropriate methods to promote equal access to employment”

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## Retaliation

- All the laws we are talking about today contain anti-retaliation provisions
- Protected activity + adverse action = retaliation!
- Protected activity = If an employee complains about discrimination or harassment OR an employee participates in an investigation into discrimination or harassment
  - Also called opposition and participation
    - Opposition to discrimination
    - Participation in discrimination investigation



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## Race Discrimination

- In 2013, the Students for Fair Admissions sued Harvard, alleging the University's undergrad admissions program violated Title VI of the Civil Rights Act by discriminating against Asian Americans.
- Lower courts upheld the use of race as a **factor** in admissions, citing lack of evidence of discriminatory animus or conscious prejudice.
- In 2023, the Supreme Court reversed the lower court ruling.

***“Eliminating racial discrimination means eliminating all of it.”***

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# Race Discrimination

- What happened next?
  - Letter from MO Attorney General
  - Executive Orders
  - EEOC guidance and enforcement




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# Race Discrimination

Press Release  
03-19-2025

## EEOC and Justice Department Warn Against Unlawful DEI-Related Discrimination

Employers' DEI Policies, Programs, and Practices Can Violate Title VII of the Civil Rights Act of 1964

WASHINGTON – Today, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) released two technical assistance documents focused on educating the public about unlawful discrimination related to “diversity, equity, and inclusion” (DEI) in the workplace.


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# Race Discrimination




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## EEOC FAQs

**Q:** If I believe I'm experiencing discrimination related to DEI at work, can I file a lawsuit in federal court without other steps?  
**A:** No. You must first file a charge of discrimination with the EEOC.

**Q:** What federal government entity can help me if I think I've experienced discrimination related to DEI at work?  
**A:** You must file a charge with the EEOC in a timely manner if you are a non-federal worker.

**Q:** What if I'm a federal employee?  
**A:** You must first contact an EEO counselor at your federal agency employer.

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## EEOC FAQs

**Q:** Do Title VII protections only apply to individuals who are part of a minority group?  
**A:** No. They apply equally to all workers.

**Q:** Are only employees protected from DEI-related discrimination at work?  
**A:** No. Title VII protects employees, applicants, and training or apprenticeship programs, and possibly interns.

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## EEOC FAQs

**Q:** When is a DEI initiative, policy, program, or practice unlawful under Title VII?  
**A:** When an employer/covered entity takes an employment action motivated, in whole or part, by a protected characteristic.

**Q:** Can an employer excuse its DEI-related considerations of protected characteristics if that characteristic wasn't the sole or deciding factor for the decision or action?  
**A:** No. As long as the protected characteristic played a part, it's unlawful.

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## EEOC FAQs

**Q:** Can an employer justify taking an employment action based on a protected characteristic because the employer has a business necessity or interest in diversity, including preferences or requests by clients or customers?



**A:** No.

**Q:** Can an employer's DEI training create a hostile work environment?

**A:** Possibly.

**Q:** Does Title VII protect employees who oppose unlawful policies or practices, including certain DEI practices or trainings?

**A:** Possibly.

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## EEOC Enforcement

Press Release  
03-17-2025

**EEOC Acting Chair Andrea Lucas Sends Letters to 20 Law Firms Requesting Information About DEI-Related Employment Practices**

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## EEOC Enforcement

**EEOC Initiates Investigation Into Harvard University Over Racial Discrimination**

by CUPA-HR | May 19, 2025




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DEI Training: Recent Cases

- *DePiero v. Penn State* – March 6, 2025
  - Zoom conversation re: George Floyd and educational equity; Juneteenth email; PDP re: antiracism
  - White professor sued under Title VII, Section 1981, and state HRA for hostile work environment
  - Eastern District of Pennsylvania held isolated incidents were insufficient to establish hostile work environment (not severe or pervasive)
- *Young v. Colorado DOC* – March 11, 2024
  - Mandatory DEI training
  - White employee sued for hostile work environment
  - Tenth Circuit held training was insufficient to establish hostile work environment (not severe or pervasive)

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DEI Training: Recent Cases

- *Diemart v. City of Seattle* – Feb. 10, 2025
  - Required three DEI classes; subjected to derogatory comments; retaliated after complaints
  - White employee sued for discrimination, retaliation, and hostile work environment
  - Washington District Court held no hostile work environment (not severe or pervasive)
- *Vavra v. Honeywell International* – July 2024
  - Required implicit bias training; fired for complaining about training
  - Seventh Circuit held no claim
  - Employee's belief that training was discriminatory was not objectively reasonable
  - No evidence training itself was racially discriminatory or motivated by racial animus

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DEI Training: Recent Cases

- *Norgren v. Minnesota DHS* – March 21, 2024
  - Employees sued under Title VII and First Amendment
  - Employer denied religious exemption request from workplace training on racism and gender identity
  - First employee was passed over for promotion three weeks after complaint
    - Title VII retaliation and religious discrimination claim survived
  - Second employee retired
    - Title VII claim dismissed – retirement notice was three weeks before exemption request

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DEI Training: Recent Cases

- Norgren v. Minnesota DHS* – March 21, 2024
  - First Amendment compelled speech claim dismissed
  - “No allegation that the Norgrens were forced to affirmatively agree with any of the statements in the training.”


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National Origin Discrimination




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National Origin Discrimination

Press Release  
 02-19-2025

**EEOC Acting Chair Vows to Protect American Workers from Anti-American Bias**


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## National Origin Discrimination

- February 2025: EEOC announced \$1.4M settlement in national origin case against LeoPalace Resort.
- Allegation that American employees were paid less than Japanese nationals.
- "If you are part of the pipeline contributing to our immigration crisis or abusing our legal immigration system via illegal preferences about American workers, you must stop. The law applies to you, and you are not above the law. The EEOC is here to protect all workers from unlawful national origin discrimination, including American workers."

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## Sex Discrimination

- Sex → Includes sexual orientation and gender identity
- 1989: United States Supreme Court finds that "sex stereotyping" is an illegal form of sex discrimination – *PriceWaterhouse v. Hopkins*







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## Sex Discrimination

### Federal Law

- June 2020:** United States Supreme Court holds that Title VII prohibits employment discrimination based on sexual orientation and gender identity – *Bostock v. Clayton County*

### Missouri Law

- February 2019:** Missouri Supreme Court holds sex stereotyping, which "is incidental to sexual orientation," can form basis of a discrimination claim – *Lampley v. MCHR*

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## Sex Discrimination

### Missouri Law

- February 2019:** Missouri Supreme Court holds that MHRA does not define "sex" as biological and accordingly, student claim could proceed – *RMA v. Blue Springs School District (I)*
- June 2025:** Missouri Supreme Court holds that "sex" refers to "one's biological classification as male or female." – *RMA (II)*
  - Rejects *Bostock*'s reasoning
  - District was motivated by "female sex" but not "male sex" so judgment for District was proper
  - No evidence of sex stereotyping

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## Sex Discrimination

### Missouri Law

- Wildhaber v. St. Louis County* (October 25, 2019)
- St. Louis County police officer awarded \$20 million
- Plus \$700,000 in attorney's fees

**Jurors say police sergeant should get almost \$20 million in discrimination suit against St. Louis County police**

By Christine Burch St. Louis Post-Dispatch On 10/25/2019

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## Sex Discrimination

- Executive Order 14168 – Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Agenda
- Promoting men and women as biologically distinct sexes, while removing messaging regarding gender identity

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# Sex Discrimination

Press Release  
01-28-2025

## Removing Gender Ideology and Restoring the EEOC's Role of Protecting Women in the Workplace

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# Sex Discrimination

- Lawsuit in September of 2024 – failure or refusal to hire male applicants
- Recent EEOC press release invited male job applicants in certain states to contact them for possible inclusion in sex discrimination case



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# Sex Discrimination

- *Ames v. Department of Youth Services* – June 5, 2025
- Heterosexual woman claimed she was passed over in hiring decisions in favor of lesbian woman and gay man
- Argued that hiring decisions were based on sexual orientation
- Lower courts
  - To show discriminatory motive, must establish “background circumstances” that defendant is “rare” employer that discriminates against members of majority group
- Supreme Court held that heterosexual woman could prevail on “reverse sexual orientation” claim
- “Title VII’s disparate-treatment provision draws no distinctions between majority-group plaintiffs and minority-group plaintiffs.”

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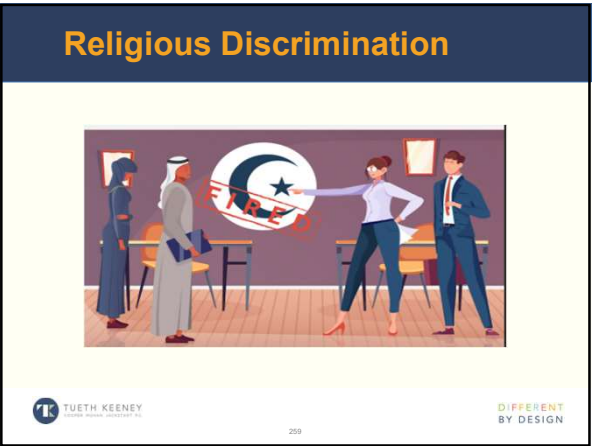
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Religious Discrimination

WHAT TO DO IF YOU FACE  
ANTISEMITISM AT WORK

The U.S. Equal Employment Opportunity Commission (EEOC) seeks to prevent and remedy employment discrimination based on religion, including against those who are Jewish. The EEOC Commissioners voted unanimously to issue a resolution calling for an end to violence, hatred, and harassment against Jewish individuals.



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Religious Discrimination

The WHITE HOUSE



PRESIDENTIAL ACTIONS

## Eradicating Anti-Christian Bias

The White House | February 6, 2025

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Religious Discrimination

PRESS RELEASE

## Attorney General Pamela Bondi Hosts First Task Force Meeting to Eradicate Anti-Christian Bias in the Federal Government

Tuesday, April 22, 2025

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Office of Public Affairs

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## Religious Discrimination

- Don't forget requests for religious accommodations
- *Groff v. DeJoy* (2023) – standard for religious accommodations
- To deny accommodation request as “undue burden,” have to show granting accommodation would result in “substantial increased costs in relation to the conduct of its particular business.”

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## Executive vs. Judiciary



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## Takeaways

- What is “illegal DEI”?
- Policies or practices that violate anti-discrimination laws
- Bottom line: cannot make employment decisions based on protected characteristic or protected activity
- Remember – Discrimination based on race, national origin, sex, religion, etc. has been against the law since 1964

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## Takeaways

- Review your current HR policies, practices, DEI programs
- Audit for legal compliance
- Think about how to avoid targeted enforcement
- Examine public facing materials
  - Mentor groups, cross cultural programing
  - DEI statistics
  - DEI task forces, groups, or roles






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## Final Thoughts: Beyond the Law

June 10, 2025

### Uncertainty at UF After Ono Rejection

The decision not to hire Santa Ono at the University of Florida due to his past support of DEI has led to confusion about the search and concerns about future recruiting efforts.




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## QUESTIONS??



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