LEGAL UPDATES

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DOJ Issues Sweeping Memorandum on Unlawful Discrimination

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On July 29, 2025, the U.S. attorney general released a new memorandum providing guidance on the application of federal antidiscrimination laws for recipients of federal funding—including private and public colleges and universities. This memorandum is the latest in a series of federal actions directly and broadly targeting race- and sex-conscious diversity, equity, and inclusion (DEI) practices. The guidance largely reinforces, but in some ways also expands on, the enforcement posture that has characterized the Trump administration over the past several months.

Background and key takeaways

This memorandum aligns with the Trump administration's enforcement efforts to date, which have sought to leverage the Supreme Court's 2023 decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (*SFFA*). In *SFFA*, the court disallowed the use of race in the context of college admissions. The Department of Justice (DOJ) and other federal agencies, such as the Department of Education (ED), have taken consistent steps to articulate expanded application of *SFFA*'s legal reasoning outside the admissions context. Broadly stated, the current administration is deeply skeptical of all DEI initiatives that take protected characteristics into account in assigning institutional benefits and burdens. The DOJ, ED, and other federal agencies have already launched investigations into a range of practices, including:

Race and sex-based scholarships, fellowships, grants, and similar awards;

Admissions or hiring preferences for persons of a given protected status, including collective definitions such as "underrepresented" groups;

Use of sex-designated bathrooms and other intimate facilities based on gender identity instead of "biological" sex;

Participation on sex-designated sports teams based on gender identity instead of "biological" sex;

DEI training and orientation programs, especially those that include potential stereotyping of white or "majority" students and employees as enjoying privilege; and

Affiliations with third-party organizations that maintain exclusionary or race-conscious programs.

The attorney general's memorandum doubles down on this approach, emphasizing that federal antidiscrimination laws—including Title VI, Title VII, Title IX, and the Equal Protection Clause—apply fully to all programs, activities, and employment practices of federally funded entities. The memorandum explains that those statutes generally prohibit discrimination—even when intended to remedy perceived underrepresentation—except in the narrowest of circumstances.

Key positions taken in the memorandum:

DEI labels do not excuse discrimination: The guidance is explicit that rebranding or relabeling a discriminatory program as "DEI" or with a similar "benign" label does not insulate it from legal scrutiny. Any program that uses protected characteristics as a basis for decision-making is at risk, regardless of its title and stated goals.

Prohibition on preferential treatment: Scholarships, internships, hiring, or promotions that give preference to individuals based on race, sex, or other protected characteristics are generally unlawful, even when intended to promote diversity.

Ban on segregated spaces and programs: Creating spaces, events, or programs limited to, or prioritized for, specific racial, ethnic, or sex-based groups is generally unlawful, even if the intent is to promote inclusion or address historical inequities.

Use of proxy criteria with an intent to discriminate: The memorandum cautions that even facially neutral criteria (such as "cultural competence," "overcoming obstacles," or targeting specific geographic areas) may violate federal law if the category at issue is adopted as a proxy for race or other protected status and with the ultimate intention of advantaging or disadvantaging individuals based on race or other protected status.

Sex-separated spaces and athletics: The guidance underscores the importance of maintaining sex-separated intimate spaces and athletic competitions based on biological sex, citing privacy, safety, and fairness for women and girls.

Third-party and contractor risks: Institutions may be liable if federal funds support discriminatory practices by contractors, grantees, or other third-party partners.

Anti-retaliation protections: The memorandum highlights protections for individuals who object to or refuse participation in discriminatory programs or policies.

While the memorandum describes its recommendations as "non-binding best practices" or "suggestions," institutions should expect DOJ and other federal agencies to seek to apply the recommendations as requirements, absent potential judicial intervention. The "non-binding" designation is likely intended to avoid legal challenges to the memorandum itself and DOJ's authority to redefine legal standards under the federal Administrative Procedure Act. In practice, the document **reflects the DOJ's current legal views and objective priorities**—and those views will almost certainly frame federal investigations, enforcement actions, and litigation, whether brought directly by DOJ or other federal agencies that have dual enforcement authority for the discrimination laws at issue. Colleges and universities should anticipate that the DOJ and other agencies will apply the principles articulated in this guidance as de facto directives when evaluating institutional conduct.

At the same time, while some of the legal positions articulated in the memorandum are widely accepted and have been validated in court, others are hotly disputed. Litigation about standards contained in the memorandum will likely result in a mix of court decisions, some agreeing with and others disagreeing with more controversial parts of the memorandum. Uncertainty over exactly how far beyond the admissions context the reasoning of *SFFA* reaches is likely to continue for some time until a consensus of appellate courts or the U.S. Supreme Court issues more definitive guidance.

What this means to you

The attorney general's memorandum is best understood as a continuation—and expansion—of the administration's ongoing efforts to broadly curtail race- and sex-conscious DEI practices. Federal agencies have already demonstrated a willingness to investigate and enforce these principles through real-world actions against colleges and universities. This latest guidance further raises the stakes for noncompliance.

Recommendation

Colleges and universities should audit their DEI programs, policies, and related practices that could be implicated by the attorney general's guidance. Institutions should assess each practice in light of the new memorandum and underlying legal precedents it cites and make adjustments based on their own risk tolerance and legal analysis.

This may include revising or discontinuing certain programs, modifying selection criteria, or adopting additional safeguards to ensure compliance with federal law.

Contact us

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