



Academic and Student Affairs Legal Update

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Office of General Counsel

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Outline of Today's Topics

- » Update on selected federal and state legal activity.
- » Highlight some new policies and procedures.

MN Dream Act Lawsuit

- » On June 26, 2025, U.S. DOJ sued the State of Minnesota and certain state officials. (Minnesota State is not a defendant)
- » The lawsuit alleges that the Minnesota Dream Act (sometimes known as the “Prosperity Act”) and an aspect of the North Star Promise Program violate federal law.
- » December 10 hearing on the State Defendants’ motion to dismiss. Decision pending.

New “Public Benefits” Interpretation and Related Litigation

- » On July 11, the Department of Education published a Notice of Interpretation regarding the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).
 - Re-interprets certain programs as “public benefits” subject to the citizenship verification requirements of the PRWORA.
 - Certain career and technical education programs under Perkins; adult education programs, and dual enrollment.
- » On July 21, twenty-one states, including Minnesota, filed a federal lawsuit in Rhode Island, seeking to enjoin enforcement of the interpretation.
- » On September 10, the United States District Court, Rhode Island District, granted the states’ motion for a preliminary injunction. (litigation continues).

Department of Justice Investigation

- » On July 10, the Star Tribune and other media reported that the United States Department of Justice had opened an investigation regarding possible race- and sex-based discrimination in hiring practices by the State of Minnesota (DHS).
- » Appears to be focused on the pre-hire justification in Minn. Stat. 43A.191.

Office for Civil Rights (OCR)

- » Chicago Office Closed.
 - Now under Denver office
- » Impact of Government Shutdown.
 - Appears to have stayed activity.
- » Forward any OCR communication to our office.
- » On January 14, 2021, the OCR issued "[Question and Answers Regarding OCR's Interpretation of Title IX and Single Sex Scholarships, Clubs, and other Programs \(PDF\)](#)." (the OCR later classified the document as "Archived AND NOT FOR RELIANCE").

Transgender Athletes

- » In February 2025, Minnesota Attorney General issued a formal opinion that Minnesota law requires schools to allow children to participate in sports consistent with their gender identity (opinion sought by the MSHSL).
- » On April 22, the State of Minnesota sued certain federal officials and agencies seeking a declaration that two Executive Orders violated the United States Constitution and the Administrative Procedures Act (motion to dismiss pending; expect the hearing in the spring of 2026).
- » On May 19, an organization called Female Athletes United sued the Executive Director of the Minnesota High School League, three school districts, and several state officials alleging that the AGO opinion and MSHSL rules violate Title IX (the court recently denied plaintiff's motion for a preliminary injunction) (this matter is on appeal to the 8th Circuit with a hearing on January 15, 2026).
- » [Feds: Minnesota's trans athlete policy violates civil rights law | MPR News](#) (Sept. 30).
- » On October 22, 2025, the Minnesota Supreme Court held that a policy prohibiting transgender women from competing in the women's division of a powerlifting competition is facially discriminatory under the business discrimination and public accommodation provisions of the Minnesota Human Rights Act. 26 N.W.3d 604 (Minn. 2025).

Current United States Supreme Court Term

- » The United States Supreme Court accepted certiorari in two cases involving transgender athletes. (Issue description from Scotus Blog).
 - *Little v. Hcox*: Issue(s): Whether laws that seek to protect women's and girls' sports by limiting participation to women and girls based on sex violate the equal protection clause of the 14th Amendment.
 - *West Virginia v. B.P.J*: Issue(s) (1) Whether Title IX prevents a state from consistently designating girls' and boys' sports teams based on biological sex determined at birth; and (2) whether the equal protection clause of the 14th Amendment prevents a state from offering separate boys' and girls' sports teams based on biological sex determined at birth.

Arguments in these two cases occurred on January 13, 2026.

\$100,000 H-1B Proclamation

- » On September 19, President Trump issued a proclamation entitled “Restrictions on Entry of Certain Nonimmigrant Workers.”
 - New \$100,000 payment obligation for H-1B petitions.
 - USCIS issued a FAQ on September 21.
- » See FAQs document from Assistant General Counsel Dan McCabe (Oct. 6 and then updated on November 6).
- » December 2025, the Minnesota Attorney General’s Office – on behalf of the State of Minnesota – joined 19 other states in a lawsuit concerning the fee venued in the United States District Court for Massachusetts. We are monitoring this lawsuit.

Department of Justice Memorandum

- » On July 29, the United States Department of Justice issued a memorandum titled “Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination.”
 - By its terms, “recommended best practices.”
- » In addition, the Department of Education Dear Colleague Letter on Title VI and Equal Protection dated February 14, 2025, is currently held unlawful and set aside in *American Federation of Teachers v. Department of Education*, Civil Case No. SAG 25-628 (D. Maryland, August 24, 2025) (litigation ongoing).

DOJ Opinion – Constitutionality of Race-Based Department of Education Programs

- » On December 2, 2025, the Office of Legal Counsel issued an opinion on the “Constitutionality of Race-Based Department of Education Programs.” See [U.S. Secretary of Education Linda McMahon Statement on the Office of Legal Counsel’s Opinion on the Constitutionality of Race-Based Higher Education Grant Programs](#) | U.S. Department of Education.

Sanctuary Jurisdiction Lawsuit

- » On September 29, the U.S. DOJ sued the State of Minnesota, the cities of St. Paul and Minneapolis, and various state and two state or county officials, alleging that certain Minnesota laws and/or local ordinances violate the United States Constitution (Supremacy Clause).
- » Minnesota State is not a defendant.

Compact for Academic Excellence in Higher Education

- » [White House Floats Compact for Preferential Treatment. \(Inside Higher Ed, October 2, 2025\).](#)
- » [Compact-for-Academic-Excellence-in-Higher-Education-10.1.pdf.](#)

State and Federal Law FAQs

- » FAQ: Student Data Privacy.
- » FAQ: Immigration and Custom Enforcement.
- » Additional FAQS issued on January 12, 2026.
- » On January 12, 2026, the State of Minnesota and the cities of Minneapolis and Saint Paul sue to halt ICE surge into Minnesota.
[January 12, 2026 Press Release](#). We will monitor.

Some New Policies and Procedures

- » New Minnesota State - System Procedure 1B.1.3 Access and Modifications for Pregnant and Parenting Students;
- » Some revisions to System Procedure 1B.3.1 - Response to Sexual Misconduct (note change to a campus hearing);
- » New Operating Instruction 1B.3.1.1 - Promoting Nondiscrimination Based on Sex (pulled administrative issues into operating instruction; information on advisors);
- » Look for revisions to 1B.4 - Access and Accommodation for Individuals with Disabilities, accompanying procedure and operating instructions (Mn Rise Act; accessibility).

Please Take Our Survey

A link to the survey is in the chat. Please provide your feedback.

Questions and Answers

» Please chat in your questions.



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Thank you.



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