

SO YOU'RE CONCERNED ABOUT LOSING FEDERAL FUNDING: 3 THINGS SCHOOLS SHOULD DO RIGHT NOW

Insights
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Many K-12 and institutes of higher education are concerned about the potential threat to their federal funding given recent changes to the way the government is interpreting existing federal law to achieve certain policy goals. Specifically, the Trump administration has taken aim at the portion of Title IX of the Educational Amendments of 1972 that governs transgender athletes, and has also started to clamp down on antisemitism through Title VI of the Civil Rights Act of 1964. What do you need to know about these developments? And more importantly, what are the three things your institution should do to preserve your federal funding?

Quick Recap of Latest News

- In late February, the U.S. Department of Health and Human Services, Office of Civil Rights (OCR), sent a [Notice of Violation](#) to the Maine Department of Education finding that its policy allowing transgender students to compete in sports that did not align with their assigned sex at birth was a Title IX violation. OCR quite pointedly referenced the Maine DOE's receipt of federal funding in the notice, suggesting that there may be a willingness to use a never-before-used process to suspend or remove federal funding.
- Additionally, in early March, the Department of Justice, U.S. Department of Health and Human Services, Department of Education, and the U.S. General Services Administration announced they were immediately [canceling](#) roughly \$400 million in federal grants and

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contracts with Columbia University over its alleged inaction in response to antisemitism on its campus. This announcement followed a previous [notification](#) from the federal government to Columbia regarding a review of all its federal grants and contracts in light of ongoing investigations under Title VI.

With respect to Title IX, many schools feel caught between a rock and a hard place. After all, applicable state laws that require protections based on a student's gender identity or expression appear to conflict with the administration's current interpretation of Title IX. And with respect to Title VI, schools face a multitude of complex issues trying to find the dividing line between First Amendment rights (not to mention federal and state laws regarding harassment and discrimination) and internal policies regarding academic freedom.

How Can You Lose Federal Funding?

Below, we set out the legal process that agencies such as OCR must use to suspend or terminate federal funding under Title IX and Title VI, and provide some steps that schools can take to alleviate concerns regarding the potential loss of federal funding.

The processes for suspending or terminating federal funding under Title IX and Title VI are set out in detail in the laws themselves – and they are not simple.

- They first require a department official to thoroughly investigate potential violations. As part of the investigation, the official must consider the factual circumstances and all factors relevant to why the entity violated the law.
- After the investigation, the official must notify the entity of the finding and attempt to resolve the issue by informal means. Those informal means typically involve a written resolution agreement with OCR, pursuant to which the agency sets certain expectations of the entity and then conducts ongoing monitoring to ensure those expectations are met.
- Only when the official finds that informal resolution efforts would be futile or that such efforts were unsuccessful can the official seek to suspend or terminate federal funding.



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- Before doing so, the official must provide the entity with notice and an opportunity for a hearing. The official must also provide a full written report of findings to the relevant House and Senate committees explaining the basis for the decision that there was a violation and the decision that the violation could not be corrected through voluntary means.
- Also important, OCR can only typically remove funding of the specific entity that it found violated the law and can only remove funding for the specific program to which the violation relates. This typically means that potential financial penalties should be applied at the program level, and not to the school in [general](#).

What Should You Do? 3 Key Steps

Here are the three things that your school should consider doing if you are worried about a potential loss of federal funding:

1. Make sure you understand the level of federal financial assistance that you receive (if any). Particularly for private schools, whether you receive federal financial assistance – even indirectly – can be a complex analysis dependent in part on applicable state laws. Consult with legal counsel to determine whether receipt of federal funding is worth the increased regulatory hurdles applicable to receiving such funding.

2. Determine whether there is a conflict between your state’s law and the revised/current interpretation of the federal law requirements. If so, you should carefully consider decisions regarding student athletes, facilities access, student protests and demonstrations, and other policies.

3. Plan ahead. If you believe a legal conflict exists, consult with your legal counsel regarding all potential impacts of your policies *before* a complaint arises.

Conclusion

Please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Education Team](#) or [Higher Education Team](#) to obtain practical advice and guidance related to these latest enforcement initiatives. Visit our [New Administration Resource Center for Employers](#) to review all

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