

Insights, News & Events

WILL MY SCHOOL FACE INVESTIGATION? FEDS ANNOUNCE RACE-BASED INVESTIGATIONS INTO 52 HIGHER EDUCATION INSTITUTIONS

Insights
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A federal civil rights agency just announced that it will be investigating more than 50 higher ed institutions to determine whether they violated federal law by making race-based decisions in their graduate and scholarship programs, the latest salvo in the administration's battle against DEI-related programs. The Department of Education's (DOE) Office of Civil Rights (OCR) released a list on March 14 that included 45 schools across the country that allegedly engaged in race-exclusionary practices in their graduate programs, and another seven that allegedly engaged in impermissible race-based scholarship and segregation activity. What does your school need to know about this situation in order to minimize your risk level?

Initial Activity

The DOE released a February 14 "[Dear Colleague](#)" [letter](#) reiterating institutions' obligations to end the use of racial preferences and stereotypes in their programs and activities. But many higher education institutions have been wondering what this would mean for them, concerned about next steps and the possibility of losing federal funding.

52 Schools Targeted for Investigation

The other shoe dropped late last week. On March 14, the OCR provided at least a preliminary answer to that question [here](#).

- Specifically, OCR alleges that 45 schools may have violated Title VI of the Civil Rights Act of 1964 by

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partnering with "[The Ph.D. Project](#)." OCR states this organization provides doctoral students with insights into obtaining a Ph.D. and networking opportunities but unfairly limits eligibility based on the race of participants.

- OCR also announced that it is investigating six additional universities for allegedly awarding impermissible race-based scholarships and one university for allegedly administering a program that segregates students based on race.

What are the Potential Consequences?

The OCR investigations are being conducted pursuant to Title VI, which prohibits discrimination on the basis of race, color, and national origin in education programs and activities receiving federal funding. As described in detail in our prior [Insight](#), a finding that an institution violated Title VI can result in the loss of federal funds.

What Should Your School Do?

This move by the DOE provides some insight into the administration's focus in the higher education space. We now know for certain that the administration is aiming its sights on race-based outreach and recruitment efforts, race-segregated programs, and race-based scholarship opportunities. Your institution should take inventory of any such efforts in these spaces to determine what, if any, risk you may have. You should consider taking such efforts hand-in-hand with your education attorney to ensure such work is done under the protection of attorney-client privilege.

What if We Are Targeted for Investigation?

Institutions facing these investigations should not try to handle them on their own. OCR investigations, like most administrative investigations, generally involve interviews, collection of documents, and written declarations. However, these activities carry with them significant importance due to the risk involved and the potential consequences, so make sure to immediately contact your education counsel if your organization is subject to an investigation.

Remember that the investigations are just that – investigations. There has been no finding of wrongdoing related to these programs, nor has there been a revocation

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of federal funds at this juncture. The process will need to work its way out before any action is taken by the government.

Conclusion

Please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [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 our thought leadership and practical resources, and make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.