

# Now & Next

## Higher Education Alert

May 19, 2026

### **OCR signals an inclusion, not elimination approach to certain sex-focused programs**

By Alexandra A. Mitropoulos and Steven M. Richard

OCR signals institutions can keep sex-focused mentoring programs if they don't restrict by sex and prominently state they're open to all students.



#### **What's the impact?**

- OCR signals that Title IX compliance may allow sex-focused programs to continue if participation is open to all and messaging clearly communicates inclusivity, rather than requiring elimination.
- There is greater uncertainty for race-focused programs under Title VI, as the executive branch and federal agencies signal stricter scrutiny compared to sex-focused initiatives.

A recent resolution agreement from the U.S. Department of Education's Office for Civil Rights (OCR) provides insight into how the Department may approach programs under Title IX that appear to be sex-specific. While agreements with the Department do not establish binding legal precedent, they offer a notable window into OCR's current enforcement posture and may provide institutions with a roadmap for evaluating similarly situated programs.

In particular, a recent agreement with Skyline College (the College) suggests that OCR is not always demanding a dismantling of programs that appear to have the purpose of supporting a single sex. Instead, the Department's focus is on ensuring that institutions do not expressly limit participation based on sex, and that communications clearly indicate programs are open to all students regardless of sex.

At the same time, the agreement raises important questions about how OCR may approach programs framed around race, ethnicity, or national origin under Title VI.

## **The Skyline College Resolution: Focus on inclusivity and messaging**

In April 2026, OCR entered into a resolution agreement (the Skyline Agreement) with the College concerning the institution's Women's Mentorship and Leadership Academy.<sup>1</sup>

Rather than directing the College to eliminate the program, OCR required the institution to:

- / Review programs to ensure they do not restrict participation based on sex;
- / Ensure that programs whose names may imply sex-based exclusivity clearly communicate that participation is open to all students regardless of sex; and
- / Revise webpage language accordingly.

Specifically, the agreement required the College to confirm that the Women's Mentorship and Leadership Academy "is open to any student regardless of sex" and that the program webpage "prominently indicates" this fact.

The Department did not require the college to:

- / Rename the program;
- / Eliminate programming focused on women's leadership or mentorship; or
- / Demonstrate equal participation rates by sex.

Instead, OCR's concern centered on whether the program could reasonably be understood as excluding students based on sex.

As the only resolution agreement of the second Trump administration to date that addresses sex-based programming, the Skyline Agreement suggests that, at least in the Title IX sex-discrimination context, OCR appears to express concern with whether programs or scholarships expressly exclude participants based on sex or are framed in ways that reasonably communicate exclusivity. Also, OCR has recently used a "rapid resolution" process to resolve complaints in

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<sup>1</sup> The College also agreed to remove any references to or listing of two scholarships from its website.

some instances, in lieu of a full investigation. This has been similar to a mediated process enabling an institution to make prompt voluntary changes to programs or scholarships to close the matter (such as the rewording of descriptions on websites confirming students' equal access).

As a result, programs may still be permissible where:

- / Participation is genuinely open to all students;
- / Eligibility criteria are sex-neutral; and
- / Institutional messaging clearly communicates inclusivity.

## What about race-focused programs?

An area of uncertainty and considerable concern for institutions of higher education in the wake of the Supreme Court's decision in *Students for Fair Admission v. Harvard (SFFA)*, Federal Executive Orders relating to DEI initiatives at federally funded institutions, and the [July 29, 2025, Department of Justice \(DOJ\) Memorandum](#), is whether OCR will apply a similar framework in the Title VI context.

While the Skyline Agreement may offer at least a partial indication of how OCR could proceed, institutions should be cautious about assuming a direct parallel between Title IX and Title VI enforcement. Unlike Title IX, Title VI does not contain a comparable regulatory framework expressly addressing race-restricted financial assistance in the same way that 34 C.F.R. § 106.37 addresses sex-restricted financial assistance. In addition, OCR and the DOJ have signaled a more aggressive posture toward race-conscious initiatives generally.

As a result, programs, initiatives, and scholarships that use race-based eligibility criteria may face substantially greater legal risk than similarly situated sex-focused programs.

## Practical considerations for institutions

If they have not already done so in the wake of *SFFA* and the second Trump administration's Federal directives, institutions may wish to consider:

- / auditing programs, scholarships, and affinity initiatives for eligibility restrictions;
- / ensuring participation criteria are clearly articulated and consistently applied;
- / evaluating whether scholarships rely on express protected-class restrictions and determining whether any such scholarships may be modified to avoid scrutiny; and
- / assessing whether programs are framed around support and outreach rather than exclusionary participation criteria.

Nixon Peabody's [Higher Education lawyers](#) help institutions navigate evolving OCR guidance; assess compliance risk; and implement practical, defensible program strategies. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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