

Higher Ed: New Lawsuit Challenges Federal Grant Program for Hispanic-Serving Institutions

Description

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A new lawsuit will test the legality of grant programs of the U.S. Department of Education for colleges and universities, charging that these programs unlawfully discriminate based on race or ethnicity. (Read the complaint [here](#).)

These programs, collectively referred to in the complaint as the “Hispanic-Serving Institutions program,” derive from three separate provisions within Titles III and V of the Higher Education Act. See 20 U.S.C. §§ 1067q(a)(2), 1101(c), §1101a. All three are administered by a [division](#) of the Department of Education. These three individual programs are:

1. Developing Hispanic-Serving Institutions (Title V, Part A): This program’s stated purpose is to “expand educational opportunities for, and improve the academic attainment of, Hispanic students” and to support “colleges and universities that are educating the majority of Hispanic college students and helping large numbers of Hispanic students and other low-income individuals complete postsecondary degrees.” 20 U.S.C. § 1101(b).
2. Promoting Postbaccalaureate Opportunities for Hispanic Americans (Title V, Part B): This program seeks to benefit, specifically in the postbaccalaureate levels, Hispanic students and “the institutions of higher education that are educating the majority of Hispanic college students and helping large numbers of Hispanic and low-income students complete postsecondary degrees.” 20 U.S.C. § 1102. Hispanic enrollment of 25% is once again an eligibility requirement. § 1102a(b)(1).
3. Hispanic-Serving Institutions – Science, Technology, Engineering, or Mathematics and Articulation (Title III, Part F): This program is an additional sources of funding available to Hispanic-serving institutions, “with priority given to applications” with a focus on STEM fields. 20 U.S.C. § 1067q(b)(2)(b).

All three programs contain a statutory eligibility requirement that participating institutions have an enrollment that is at least 25% Hispanic. See 20 U.S.C. § 1101a(a)(5) (defining “Hispanic-serving institution”); *id.* §§ 1101b(a), 1102a(b)(1), 1067q(b)(2)(B) (incorporating this definition into eligibility requirements of all three grant programs).

This requirement is the focus of the lawsuit: plaintiffs (the State of Tennessee and a membership organization representing university students and faculty) charge that the programs’ use of ethnicity in their eligibility requirements is unconstitutional. The plaintiffs argue that the 25% Hispanic eligibility cut-off facially discriminates on the basis of ethnicity; that it further “unconstitutionally requires and encourages institutions of higher education to discriminate against or distinguish between students based on ethnicity”; and that this discrimination fails constitutional strict scrutiny. Accordingly, the complaint seeks a declaration that the programs’ ethnicity-based requirements are unlawful and an injunction prohibiting their future enforcement or application.

Parties that could be affected by the lawsuit, especially participating colleges and universities, should continue to monitor this litigation for further development, and engage PSH attorneys [Elizabeth O. Manchester](#), [James P. McGlone](#), or [Kelley J. O'Donnell](#) should they have any questions or concerns.

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