

The Risky Academy: Environmental Scan for June 2013

ENROLLMENT

The U.S. Supreme Court has vacated a decision by the U.S. Court of Appeals for the Fifth Circuit that had upheld the race-conscious admissions policy at the University of Texas at Austin. In a 7-to-1 ruling, the court held that the Fifth Circuit was incorrect in upholding a lower court's summary judgment in favor of Texas because the lower court had failed to apply strict scrutiny to the university's policy. The court left intact its precedent that diversity can be a compelling government interest. "While we are disappointed that the court did not rule in favor of the University of Texas at Austin, we are pleased that the previously established principle of limited race-conscious admissions standards remains intact," President McRobbie said in a prepared statement. "Indiana University will analyze the decision carefully before taking any action as a result of the Fisher case." [In Narrow Ruling, Supreme Court Vacates Decision That Upheld Race-Conscious Admissions; Supreme Court ruling | U of L, UK say ruling won't alter policies on racial diversity; Fisher v. University Of Texas At Austin Ruling Leaves Universities In Limbo](#)

The United States' global competitiveness is suffering in part because recent policies at all levels of education have widened the achievement gap between rich and poor, according to a report released by the Council on Foreign Relations. As a result, the percentage of 25- to 34-year-old Americans who have completed college has fallen to 13th in the world, while older Americans earned college degrees at a rate that put the country third internationally. [Widening Achievement Gap Hurts U.S. Competitiveness, Report Says](#)

SAFETY

The University of North Carolina at Chapel Hill has dropped a case in its student-led honor court against a student who spoke out about sexual assault on the campus. The student faced discipline for allegedly intimidating a fellow student who she said had sexually assaulted her. She was one of five women who filed federal complaints this year over the institution's handling of sexual-assault cases. [Chapel Hill Drops Case Against Student Who Complained of Sexual Assault](#)

The American Association of University Professors said it was "deeply concerned" about what it said was the redefinition of sexual harassment proposed in the University of Montana at Missoula's recent agreement with federal officials to resolve an investigation of the institution's handling of sexual-assault cases. The AAUP is also "deeply concerned" about what some critics have said is the agreement's expanded definition of sexual harassment which "eliminates the critical standard of 'reasonable speech,' and, in so doing, may pose a threat to academic freedom in the classroom." [AAUP Questions Agreement in Sex-Assault Inquiry at U. of Montana](#)

A shooting spree that killed five people ended at the library of Santa Monica College, where police officers shot and killed the gunman. In a message to the campus, President Tsang emphasized that the incident was "not a school shooting" but instead resulted when the gunman ran onto the campus to evade police officers. [In California, a Deadly Shooting Spree Ends at a Community-College Library](#)

Seven people were injured in an explosion that rocked a building on the campus of Nyack College. The cause of the explosion, which witnesses said blew out windows and the door to the building, was not clear. [7 People Are Injured in Explosion at Nyack College](#)

Princeton University evacuated its campus in the wake of a bomb threat against what it said was "multiple unspecified campus buildings," and the University of New Hampshire also received a "nonspecific" bomb threat that it said the police had determined to be a hoax. [Bomb Threats Disrupt Princeton U. and U. of New Hampshire](#)

RESEARCH

Federal research-ethics regulators have retreated from their consideration of punitive action over a medical trial at 23 universities in which premature babies faced potentially lethal oxygen levels, saying government rules may have been unclear. The federal Office for Human Research Protections cited a series of problems with the research project, including the failure to properly notify parents of the risks that infants enrolled in the study might face. The agency then blamed itself, saying it had an "obligation to provide clear guidance on what the rules are with regard to disclosure of risks in randomized studies whose treatments fall within the range of standard of care." [U.S. Agency Backs Away From Penalties in Controversial Study Involving Infants](#)

Leaders of the National Institutes of Health spoke in despairing terms about its ability to prevent severe damage to university research due to budget cuts, saying Congress seemed determined to inflict more financial pain on the NIH and the scientists it supports. [NIH Is Pessimistic as It Counts Damage From Budget Cuts and Fears More](#)

ATHLETICS

Four years ago, when Ed O'Bannon filed a federal antitrust lawsuit against the NCAA, he had a fairly straightforward grievance - that he and other former star players deserved a slice of the multimillion-dollar revenue the association brings in from the sale of video games and other commercial products that used their likenesses. Since then Mr. O'Bannon's complaint has broadened to include potentially thousands of current and former football and men's basketball players, all laying claim to a share of the billions of dollars in broadcast revenue flowing into the game. A federal judge is set to consider whether to certify the matter as a class action. The ruling on that question is among the most highly anticipated in the case, which is scheduled to go to trial next summer. What's at stake is not just the issue of players' rights to revenue from TV broadcasts and video games, but the very nature of college sports and the NCAA's role in regulating it, legal scholars say. [Lawsuit Over Athletes' Rights Challenges NCAA's Principles of Amateurism](#)

A wave of damaging allegations about new athletics director Julie Hermann has put the Rutgers president on the defensive again and further weakened an already wounded leader. [For Rutgers President, Sports Controversies Open Another Wound](#)

A federal judge threw out Gov. Tom Corbett of Pennsylvania's antitrust lawsuit against the NCAA, which sought to overturn the penalties the association imposed on Pennsylvania State University in the wake of the Jerry Sandusky sex-abuse scandal. [Judge Tosses Out Challenge to NCAA Penalties Against Penn State](#)

Penn State has set aside the first installment of a \$60-million fine levied by the NCAA. But is unclear to whom they pay it, because the NCAA and Pennsylvania lawmakers are embroiled in a dispute over whether the money must be disbursed within the state. [Penn State Pushes for a Decision on Where to Pay Its NCAA Fine](#)

Ties have been discovered between advisers at the University of North Carolina at Chapel Hill and a former leader of its department of African and Afro-American studies, who departed last year amid allegations of impropriety. Emails reveal that members of North Carolina's academic-support staff negotiated with the department's former chairman to schedule a no-show class. [Academic Advisers for Athletics Grapple With UNC Controversy; E-Mails Suggest Closer Link Between Athletics and Academic Fraud at UNC](#)

Mississippi State University has been hit with two years of probation and a reduction in football scholarships after the NCAA found that a booster provided impermissible benefits to a top prospect. The NCAA said a former assistant coach for the Bulldogs learned of the booster's improper activity but did not report it to university officials. [NCAA Punishes Mississippi State U. for Recruiting Violations in Football](#)

The NCAA has placed the University of Oregon on three years' probation after finding recruiting violations in the university's football program. Penalties in the case include reductions in football scholarships, officially paid football visits, and football evaluation days. [NCAA Punishes U. of Oregon for Recruiting Violations in Football](#)

ACADEMIC QUALITY

A group of former interns are suing Fox Searchlight Pictures for alleged violations of federal and state labor laws. A federal judge determined that two former interns in the case had worked like paid employees and that the claims of another former intern could proceed as a class action. "Receipt of academic credit is of little moment. A university's decision to grant academic credit is not a determination that an unpaid internship" is legally defensible, the judge said. [Colleges Draw Criticism for Their Role in Fostering Unpaid Internships](#)

One of the first things researchers have learned about student success in massive open online courses is that in-person, one-on-one teaching still matters. For online learners who took the first session of "Circuits & Electronics," MIT's hallmark MOOC, those who worked on course material offline with a classmate or "someone who teaches or has expertise" did better than those who did not. [MOOC Students Who Got Offline Help Scored Higher, Study Finds](#)

Colleges of education are "an industry of mediocrity" that churns out unprepared teachers to work in the nation's elementary and secondary schools, according to "Teacher Prep Review," a report that describes the findings of a controversial effort to rate the quality of programs at 1,130 institutions nationwide that prepare about 99 percent of the nation's traditionally trained teachers. The report is the product of a partnership between the National Council on Teacher Quality and U.S. News & World Report. Indiana University-Bloomington made the "honor roll" with three stars. ['An Industry of Mediocrity': Study Criticizes Teacher-Education Programs](#)

HUMAN RESOURCES

A discrimination and retaliation suit against Louisiana State University has been reinstated, citing the "cat's paw" theory of liability, where employers can be held liable for discriminatory

conduct even if the person who made the decision was not discriminatory, but relied in part on those who were. In other words, if other employees, acting in retaliation or with discrimination, advise or manipulate the decision-maker, the institution may be found liable. [Court reinstates discrimination, retaliation suit against LSU](#)

In a ruling that could limit the liability of colleges and other employers for workplace harassment, the U.S. Supreme Court upheld a lower court's decision to throw out a lawsuit against Ball State University and took a narrow view of who is considered a "supervisor" under federal employment-discrimination law. The court, in a 5-to-4 ruling, said an employee is a considered a supervisor only when he or she is empowered by his or her employer to take "tangible employment actions," such as hiring, firing, demoting, promoting, transferring, or disciplining. The legal definition of supervisor is significant because the Supreme Court has previously held that an employer generally carries vicarious, automatic liability for damages resulting from workplace harassment committed by an employee who is in a supervisory role and thus acts as its agent. Deborah Widiss, a discrimination law expert at the IU Maurer School of Law in Bloomington, said that the court is responding to the reality that more employees are falling into the gray area between being a formal supervisor and having some control over a coworker's assignments. Mid-level managers may not have formal supervisory authority, but are often well positioned to harass co-workers through abusive assignments for work, or regularly denigrating them with highly offensive racial or sexual slurs, Widiss said. "And employees who are subject to this may be reasonably very nervous about complaining." [Supreme Court Rules for Ball State U. in Workplace-Harassment Case; U.S. Supreme Court rules Ball State not liable for alleged hostile work environment](#)

About 300 longtime employees of the University of Louisville—roughly 5 percent of its work force—have accepted a buyout plan intended to reduce salary costs. [300 Employees Accept Buyout Offers at U. of Louisville](#)

The U.S. Equal Employment Opportunity Commission has filed lawsuits against units of BMW Group and Dollar General Corp. for their use of criminal background checks. In the Dollar General case, the lawsuit charges that the retailer conditions all of its job offers on criminal background checks, which results in a disparate impact against African-Americans. Since issuing its first written policy guidance in the 1980s regarding the use of arrest and conviction records in employment decisions, the EEOC has advised employers that under certain circumstances, their use of that information to deny employment opportunities could be at odds with Title VII. [EEOC sues BMW, Dollar General units over criminal background checks](#)

Unequal pay and the lack of employee benefits, little or no access to professional development, and job insecurity raise serious concerns about risk management that have not been addressed by many institutions. A tight academic job market, poor working conditions, significant inequities, and power imbalances may leave aggrieved non-tenure-track faculty with little recourse other than to resort to litigation in an effort to protect their perceived rights. [The Changing Academic Workforce](#)

FINANCIAL AID

The number of student-aid recipients potentially defrauding the federal government increased by 82 percent from 2009 to 2012, to more than 34,000 students, according to a risk analysis released by the Education Department's Inspector General. The department is preparing to

conduct rule-making sessions that will touch on ways to prevent fraud in the student-aid programs. [Risk of Student-Aid Fraud Is on the Rise, Education Dept.'s Inspector General Says](#)

The U.S. Department of Justice has begun an investigation into "a possible agreement" among colleges to reform their financial-aid policies after they learned of discussions among college officials about how—or whether—they could collaborate to limit their use of merit-based financial aid and reduce bidding wars for applicants. [U.S. Opens Antitrust Investigation Into Colleges' Talk of Student-Aid Reform](#); [Colleges Can't Collaborate—Except When They Can](#)

FINANCE

The UCLA business school has won approval from the system's president to transform its full-time M.B.A. program from state-supported to self-supported by tuition. Critics had called the controversial plan an effort to privatize part of a public university, but the final version was less ambitious than the original proposal. A UCLA news release noted the conditions that Mr. Yudof had placed on the program's change in status, including that the program continue to offer students financial aid at the same level as similar programs across the system. [UCLA Gets Approval to Move M.B.A. Program Off of Public Support](#)

Liberty University's law school has sued Hanover Insurance Co. seeking defense coverage as the school faces racketeering charges in the alleged kidnapping of a 10-year-old girl. The university's law school was named in a lawsuit involving a custody battle over the girl when one party took her to Nicaragua, allegedly with help from attorneys and individuals affiliated with the university. Hanover denied coverage because the suit did not claim bodily injury, property damage, and personal or advertising injury, which are among provisions required to trigger coverage in the policies. [University accused in kidnapping sues to win defense from Hanover](#)

Donations to nonprofit colleges and other charities are inching up so slowly that it will take at least six more years for most organizations to raise as much as they did in 2007, before the recession hit, predict researchers behind the "Giving USA" report, whose figures show donations rose just 1.5 percent last year after inflation. [Donations Barely Rose Last Year as Individuals Held Back, Report Says](#)

The spread of massive open online courses, or MOOCs, is "credit positive" for universities that offer them but "credit negative" for a majority of lesser-known institutions that lack a prominent brand name, according to a report published on Monday by Moody's Investors Service. [Moody's Says MOOCs Could Raise a University's Credit Rating](#)

COMPLIANCE

Criticisms about the accreditation system were aired again in the U.S. House of Representatives, where the Subcommittee on Higher Education and Workforce Training held a hearing to discuss the frustrations of members in both parties. Two outspoken critics, who approach the issue from very different viewpoints, encouraged the subcommittee to overhaul how the federal government regulates higher education. [U.S. House Panel Questions Value of Accreditation](#)

INTERNATIONAL

NYU found itself responding to charges that, under pressure from the Chinese government, it had asked a Chinese dissident who has spent the past year at the university as a visiting fellow to

leave. The accusations came from the blind human-rights activist himself, who warned of threats to American academic freedom and independence from "a totalitarian regime." As American universities engage more, and more deeply, with China and other countries that have limited protections for academic and political speech, they may find themselves facing more challenges. [Academic Ties With China Face New Scrutiny in Dispute Over Dissident](#)

GOVERNANCE

North Dakota's State Board of Higher Education voted unanimously to buy out the contract of Chancellor Shirvani, ending his brief, turbulent tenure as head of the state's 11-campus university system. He and the board have fended off many criticisms and controversies, including allegations that the chancellor encouraged board members to violate the state's open-meetings law. [After Less Than a Year, North Dakota Board Buys Out Chancellor's Contract](#)

E. Gordon Gee, who is known as much for the foot in his mouth as the bow tie on his neck, is calling it quits as president of Ohio State University. [Gordon Gee, Ohio State's Gaffe-Prone President, Will Retire](#)

The debate over the higher education presidential search process is re-emerging in many states. Two lawsuits argue that Louisiana State University violated the state's public-records law by withholding the names of candidates for its top job. In other states, like Wyoming and Tennessee, legislatures have grappled with whether to alter public-records laws to make university searches open or closed. [More Public Colleges Opt for Closed Searches](#)

Diminished resources and poor leadership have brought Howard University to the brink of an existential crisis, according to a letter the vice chairwoman of the university's Board of Trustees sent to her colleagues. Renee Higginbotham-Brooks paints a dire picture of the historically black institution's future. "I can no longer sit quietly, notwithstanding my personal preference to avoid confrontation, and therefore, I am compelled to step forward to announce that our beloved university is in genuine trouble and 'time is of the essence,'" Ms. Higginbotham-Brooks wrote. "Howard will not be here in three years if we don't make some crucial decisions now." [In Ominous Letter, a Trustee Blasts Howard U.'s President and Board Chair](#)

Stephen Dunham, general counsel at Penn State, says he doesn't focus on the complex challenge of defending the university from numerous lawsuits and investigations. Instead, the opportunity to make significant changes in the university's governance practices, including the operations and policies of the Board of Trustees, was the main reason he left his job at the Johns Hopkins University 11 months ago to go to Penn State. Penn State is in the midst of enacting nearly 120 policy changes recommended by an independent investigation, conducted by the former FBI director Louis J. Freeh, into how top university officials responded to complaints about Mr. Sandusky. More than 20 of those recommendations relate to the 32-member board, such as creating committees that deal with risk management and regulatory-compliance issues, and developing guidelines for when potential legal problems or other risks should be reported to the trustees. [Freeh Report Sets a High Bar for Governance, College Lawyers Say](#)

RELEVANT EVENTS and MEETINGS ATTENDED BY IU STAFF

University of California "ERM University," May 6

Indiana University Enterprise Risk Management Committee (ERMC) meeting, June 17 - Risk Area "Faculty Quality" discussion with Risk Owners John Applegate and Nasser Paydar

Ryan Chizum achieved a passing score on the Associates in Risk Management Enterprise Risk Management (ARM-ERM) exam

NEW ERM RESOURCES

Principles of the ISO 31000 risk management standard include the idea that risk management should create and protect value and be part of organizations' decision-making, areas in which many organizations are missing the mark. [ISO 31000 risk management standard helps balance uncertainty and opportunity](#)

This monthly publication is being sent to all IU Risk Owners and others participating or interested in the IU Enterprise Risk Management (ERM) initiative by Merri Beth Lavagnino, Chief Risk Officer for IU, in order to increase awareness of current trends affecting enterprise risk in higher education. Please reply to her at mb1@iu.edu if you would like to be taken off the mailing list, or if you have others you would like to add to the mailing list. Thank you!