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2025 Institute for Chief Academics Officers with  
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# Understanding and Navigating the Dynamic Legal Hurdles on the Track to Student Success

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# Current Higher Education Landscape



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# Agenda

- Identifying Legal Hurdles
- Case Studies
- Clearing Legal Hurdles Like a Champ!



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# Identifying Legal Hurdles

- Intersection where law, institutional policy and student success collide:
  - Diversity, Equity and Inclusion
  - Campus Safety
  - Faculty Concerns



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# Diversity, Equity and Inclusion



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# Impact of Students for Fair Admissions v. Harvard/UNC

- Race conscious affirmative action in admissions held unconstitutional:
  1. policies lack coherent, focused objectives to legally warrant consideration of race
  2. universities used an applicant's race in a “negative manner”
  3. the absence of “meaningful end points” for the policies
- Ruling based on Equal Protection Clause and Title VI of Civil Rights Act
- Impact beyond admissions?



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# Trump Administration DEI Executive Orders

- **EO 14148 - Initial Rescissions of Harmful Executive Orders and Actions (01/20/25)**
  - Rescinded 78 executive orders and presidential memoranda from the Biden Administration, including 7 related to DEI initiatives in higher education
- **EO 14173 - Ending Illegal Discrimination and Restoring Merit-Based Opportunity (01/21/25)**
  - Seeks to terminate all programs or efforts related to DEI within executive department and agencies
  - Nationwide injunction entered on 02/21/25 - *National Association of Diversity Officers in Higher Education v. Trump*, 1:25-cv-00333 (D. Md. Feb. 21, 2025)
- **EO 14151 – Ending Radical and Wasteful Government DEI Programs and Preferencing**
  - Seeks to end all federal government DEI programs
  - Nationwide injunction entered on 02/21/25 - *National Association of Diversity Officers in Higher Education v. Trump*, 1:25-cv-00333 (D. Md. Feb. 21, 2025)



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# Department of Education's February 14, 2025 Dear Colleague Letter

- “If an educational institution treats a person of one race differently than it treats another person because of that person’s race, the educational institution violates the law.”
- Letter claims that *Students for Fair Admissions* ruling goes past admissions evaluations and should prohibit institutions from considering race in “hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life.”
- **Three “Advised” Actions**
  - Ensure that policies and actions comply with existing civil rights law
  - Cease all efforts to circumvent prohibitions on the use of race by relying on proxies or other indirect means to accomplish such ends
  - Cease all reliance on third-parties that are being used by institutions in an effort to circumvent prohibited uses of race
- **DCL Does not carry force of law** – insight into enforcement of civil rights law by ED



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- April 24, 2025: federal judges in New Hampshire and Maryland find Feb. 14 Dear Colleague Letter violates procedural standards and First Amendment
  - Preliminary injunction from NH limited to member institutions of plaintiff association
  - MD judge's opinion prevents letter from taking effect until the case is resolved, which essentially serves as a nationwide injunction
  - NH judge said policies in letter failed to appropriately define DEI and threatened to erode “foundational principles” of free speech and academic freedom
  - MD judge explained letter did not satisfy “substantive and procedural legality,” and that “procedural failures...tangibly and concretely harmed the Plaintiffs”



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# Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination – July 29, 2025

- The DOJ issued guidance to signal its enforcement stance without triggering judicial injunctions, especially amid ongoing litigation; this move allows it to shape policy informally and assert leadership over DEI-related enforcement, notably following settlements with Brown and Columbia
- The memo clarifies that federal antidiscrimination laws apply to all federally funded programs regardless of their DEI mission
- Offers “Best Practices” as recommendations to help institutions avoid legal violations and potential funding risks. Examples of flagged practices include:
  - Race-based scholarships
  - Access to facilities or resources based on race or ethnicity
  - Race-based training sessions
  - Implicit segregation through program eligibility (e.g. “a workshop for underrepresented minorities”)



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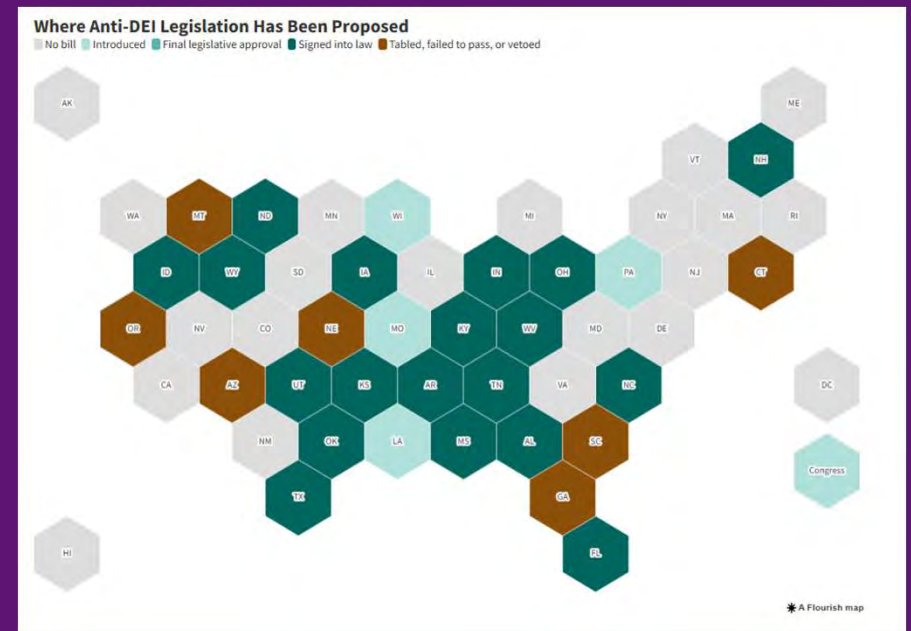
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# Diversity, Equity and Inclusion Changes

- Since 2023, *The Chronicle of Higher Education* has tracked 134 bills in 29 states and Congress
- As of August 22, 2025:
  - 136 bills introduced
  - 29 bills with final legislative approval
  - 29 bills became law
  - 99 have been tabled, failed to pass, or been vetoed on





# Diversity, Equity and Inclusion Changes

- As of October 17, 2025, *The Chronicle of Higher Education* tracked DEI changes at 413 colleges in 47 states and Washington D.C.
- Common changes = schools closing and transforming DEI offices and relocating or laying off staff
- Many institutions scrubbed DEI references and language from institution's webpage
- Some schools eliminating use of diversity statements in hiring and mandatory diversity training



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# Linking Student Success to DEI Compliance

- Shift from Race-Based to Mission-Aligned Support
- Rebuild Inclusive Programming Around Academic Outcomes
  - Use data to target support services where disparities exist (e.g., tutoring, mentoring, advising)
- Redesign Scholarships & Aid
  - Replace race and sex based scholarships with need-based, geographic or first-gen awards
  - Ensure eligibility criteria are clearly tied to educational mission and student success metrics
- Use Data to Drive Equity Without Identity-Based Targeting
  - Monitor gaps in performance, engagement and access — then intervene with race-neutral strategies
- Communicate Transparently with Stakeholders
  - Invite student input on how to maintain inclusive environments under new constraints
- Collaborate across institutions



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# CASE STUDY #1: DEI Initiatives

An LGBTQ+ advocacy organization reaches out to your institution with a proposal: they want to host a citywide Lavender Graduation ceremony for LGBTQ+ students from all local colleges. The event would be held off-campus at a neutral venue and is intended to celebrate students whose institutions canceled similar events last May due to political pressure and legal uncertainty.

The group asks your institution to:

- Promote the event through official channels (email, social media, student affairs)
- Encourage faculty and staff to attend
- Allow student organizations to co-sponsor or participate

Some administrators worry that promoting the event could be interpreted as endorsing a political stance or violating new state-level restrictions on DEI-related programming. Others argue that supporting the event aligns with the institution's mission to foster inclusion and celebrate student achievement.

- What do you do?
  - Do you promote the event officially, allow informal support, or decline involvement?
  - How do you balance legal compliance with student support and community engagement?
  - What message does your decision send to students, faculty and the public?



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# CASE STUDY #1: DEI Initiatives

## Balancing Inclusion with Legal Risk:

- Prefer events be open to all students to avoid exclusion concerns and ensure alignment with Title VI

## Institution Role:

- The institution may acknowledge the event informally but should avoid official sponsorship, funding or promotion through institutional channels
- Student groups may participate independently, but institutional messaging should clarify the event is externally organized

## Legal Risks:

- In September 2025, the Department of Education found the University of Kentucky violated Title VI by promoting a racially exclusive event affiliated with the PhD Project
- Kentucky was cited for prior funding and promotion; now required to report and justify any identity-based partnerships

## Recommended Action:

- Review promotional and partnership policies for neutrality and compliance
- Consider mission and religious based approaches
- Communicate clearly and consistently about institutional boundaries



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# Campus Safety



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# Campus Protests

- Although less prevalent, protests continue
  - About 80 pro-Palestinian protesters were arrested at Columbia May 7, 2025, after occupying reading room in campus library just over a year after students occupied Hamilton Hall
  - 31 students arrested after about 75 protesters at University of Washington occupied a new engineering building on May 5, 2025, barricaded the doors, and started fires in nearby dumpsters
- Policies and response plans
- PR/common sense v. legal responses
- Addressing issues early
- New administration's focus on antisemitism
  - Funding cuts to Columbia, Harvard
  - Investigations



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# Hosting Controversial Events: Balancing Safety & Free Speech

- Political events can trigger intense public reaction and safety concerns
- Canceling events may be perceived as viewpoint discrimination
- Institutions must balance free expression with campus safety and legal compliance
- Ensure adequate security (e.g., indoor venues, bag checks, surveillance) without targeting specific viewpoints
- *Forsyth County v. Nationalist Movement* (1992): Security fees cannot be based on anticipated hostility toward a speaker's message



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# CASE STUDY #2 – Speakers on Campus

A student organization invites a nationally known political commentator to speak on campus. The speaker has a history of inflammatory remarks about race, gender and immigration. In the days leading up to the event, social media backlash intensifies, and local officials warn of potential protests. Some faculty and students call for cancellation, citing safety concerns. Others argue that canceling the event would violate free speech principles.

## What Do You Do?

- Do you allow the event to proceed, modify it or cancel it?
- How do you ensure safety without appearing to suppress speech?
- What policies guide your decision, and are they content-neutral?

## Considerations:

- Is your security plan adequate and equitable across all events?
- Are fees or restrictions being applied fairly to all student groups?
- How will your decision affect campus climate, legal exposure and public perception?



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# CASE STUDY #2 – Speakers on Campus

## Key Principles:

- **Safety First, But Fairly:** Use indoor venues, bag checks and surveillance — without targeting specific viewpoints
- **Content-Neutral Policies:** Apply permits, fees and procedures consistently across all groups

## Institutional Action:

- Review and update event policies for clarity and neutrality
- Train staff on legal standards and risk management
- Communicate openly with student groups and the public to build trust and transparency



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# Faculty Concerns: Tenure and Performance Evaluations



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# Faculty Performance Evaluations - Current Legal Landscape

- Effective evaluation is integral for successful risk management
- Many claims can be traced to evaluation processes
  - Were they clear?
  - Were they consistently applied?
  - Were they focused on legitimate, non-discriminatory factors?
    - Especially important with increased discussions around protected characteristics
- Examine your evaluation policies and procedures
  - You will be expected to identify and defend the decision-making frameworks that you use



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# Tenure – Legal Landscape

- Outright bans have mostly failed
  - Legislation to outright eliminate tenure has been watered down or failed in most jurisdictions
  - A few states have passed tenure bans, but only for state institutions (Idaho)
- Faculty members argue that tenure protects academic freedom and helps recruit faculty
- Tenure has weakened due to other laws and legislative action:
  - Indiana law banning tenure to professors who are “unlikely to foster intellectual diversity”
  - University of Georgia systems attempting to change post-tenure review in ways that take away fired professor’s right to a hearing led by fellow faculty members
  - West Virginia University dismissed tenured faculty as part of large layoffs and program cuts



# Faculty Performance Evaluations – Key Concerns

- Detail and consistency of the process
- Appointment and duties of decision-makers
- Clarity of processes to be employed and adequacy of evidence used in decision-making
- Training of decision-makers regarding consistent application of evaluation process and standards of review
- Finding varied and innovative strategies to seek to resolve concerns outside of litigation



# Hurdles to Effective Evaluations

- Failure to define expectations at hiring
- Lack of consistency between expectations and actual duties
- Conflict avoidance
- Lack of timely implementation and follow-up
- Demographic or leadership shifts in the department
- Vague policy language



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# General Importance of Faculty Evaluations

- Faculty handbooks usually obligate evaluations and prescribe process for evaluations
- Effective evaluations help:
  - Optimize institution's human resources
  - Advance institution's best interests – employees and students
  - Establish a positive relationship between:
    - Aspirations of the department and institution
    - Faculty member's competencies and aims



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# ***Chen v. University of Dayton*, 228 N.E.3d 19 (2023)**

- Professor denied tenure after receiving an “unacceptable” teaching evaluation despite prior positive feedback
- Sued for breach of contract, claiming lack of clear evaluation criteria and unfair treatment
- University argued its policies were applied fairly and consistently across faculty
- Court found no breach—criteria were clear and properly followed, even if evaluations involved subjective judgment



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# Faculty Tenure, Evaluation & Student Success

## Why It Matters:

- Tenure protects academic freedom and attracts top talent
- Evaluations ensure teaching quality and accountability

## Student Success Link:

- Clear, fair evaluations promote strong instruction and mentorship
- Post-tenure review should support growth, not punish dissent
- Align faculty goals with student learning, retention and career readiness

## Action Steps:

- Clarify expectations and review processes
- Train evaluators for consistency and fairness
- Connect faculty development to measurable student outcomes



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# Faculty Concerns: Academic Freedom



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# Chilling Effect of the Current Political Climate

## Overview:

- Recent executive orders and administrative directives have created uncertainty around what faculty can teach, especially on topics related to gender, race, identity and inclusion
- Faculty across multiple institutions report a chilling effect on academic freedom, with some revising syllabi or avoiding sensitive topics altogether

## Impact on Higher Education:

- Increased scrutiny of course content and syllabi
- Faculty fear of disciplinary action or public backlash
- Legal claims coming from everywhere



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# Practical Guidance

- **Reaffirm Mission and Academic Values:** Clarify that your institution is not bound by state directives affecting public institutions; uphold academic freedom and inclusion consistent with your institutional mission
- **Support Faculty Confidence:** Offer clear internal guidance on teaching sensitive topics within scholarly and mission-aligned frameworks
- **Communicate Transparently:** Keep students informed about curriculum decisions and reinforce the institution's commitment to open inquiry
- **Safeguard Campus Climate:** Monitor for confusion or fear among students and faculty; provide support and spaces for dialogue
- **Align with Accreditation & Career Prep:** Maintain instruction that meets professional standards and prepares students for diverse workplaces



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# Outside Speech & Institutional Pressure

- Faculty and staff are increasingly vulnerable to disciplinary action for personal speech made outside the classroom
- Social media posts, even when unrelated to teaching duties, are being scrutinized under vague professionalism policies
- Doxing campaigns target educators for critical or controversial remarks about public figures
- Institutions often respond swiftly to public pressure, suspending or terminating employees without clear legal justification
- Chilling effect on personal expression, with some faculty self-censoring to avoid backlash and others perhaps seeking conflict



# Outside Speech: Best Practices

- Know Legal Leeway
  - Private institutions are not bound by the First Amendment, but may be subject to policies, state laws, contracts and accreditation standards that protect academic freedom
  - May also face pressure from media, state government, OCR
  - Institutional policies and faculty handbooks often serve as the governing framework — ensure they are clear and consistently applied
- Maintain Policy Consistency
  - Apply conduct and professionalism policies uniformly across departments and cases
  - Avoid ad hoc disciplinary actions driven by public pressure or political backlash



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# Outside Speech: Best Practices

- Prepare for Doxing & Public Campaigns
  - Develop protocols for responding to online harassment of faculty and staff
  - Communicate clearly with internal stakeholders and the public about institutional values and due process
- Consult Legal and PR Experts Early
  - Engage legal counsel to assess risk and defensibility of any disciplinary action
  - Coordinate with communications teams to manage reputational impact while upholding institutional principles



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# CASE STUDY #3 – Faculty Curriculum Compliance

- Your institution receives a letter from the state attorney general urging alignment with recent executive orders that recognize only two human sexes. While no state law mandates these changes for private institutions, the directive is accompanied by verbal warnings and the implied threat of OCR investigation for noncompliance. The letter asks faculty to revise syllabi to remove “noncompliant” material, though no formal definitions or written guidelines are provided. The letter additionally discourages teaching about gender beyond the male-female binary.
- What do you do?
  - Do you comply with the directive?
  - Do you issue your own guidance to clarify expectations?
  - Do you support faculty who want to teach textbook-based or historical gender content?
  - How do you protect student learning outcomes while managing legal risk?
- Considerations:
  - Legal compliance vs. institutional values
  - Faculty morale and academic freedom
  - Student success and curriculum integrity



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# CASE STUDY #3 – Faculty Curriculum Compliance

- Texas public universities instructed faculty to revise syllabi to align with federal/state laws and executive orders on recognizing two human sexes.
  - EO 14168 - Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
  - Texas House Bill 229
  - Gov. Abbot's January 30 letter affirming binary sex recognition
- **San Jacinto College:** Faculty asked to align course outcomes with state manuals; verbal guidance discourages teaching gender beyond male-female binary
- **Angelo State University** (Texas Tech System): Verbal directives ban pride flags, preferred pronouns and transgender identity discussions
- Faculty Reaction
  - Widespread confusion and fear over what can be taught
  - Some faculty preemptively revised syllabi; others reported chilling effects on academic freedom
  - Provost's guidance (later removed) allowed textbook-based and historical content if framed as scholarly, not advocacy



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# CASE STUDY #4 – Faculty Free Speech

A tenured professor known for research on human sexuality is disciplined after making comments in class and online about the professor's own sex life and students' sexual behavior. The university claims the remarks fall outside formal teaching, scholarship or public discourse. The professor argues the comments reflect their academic focus and are protected.

## What Do You Do?

- Do you treat the speech as part of academic inquiry or as personal misconduct?
- How do you distinguish between protected academic speech and inappropriate personal disclosure?
- What standards guide your disciplinary decision?

## Considerations:

- Is the speech connected to curriculum, scholarship or public concern?
- Does it violate professional conduct or create a hostile learning environment?
- How do institutional policies define boundaries between academic freedom and personal behavior?



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# CASE STUDY #4 – Faculty Free Speech

*Kashdan v. George Mason University*, 70 F.4th 694 (4th Cir. 2023).

- Tenured psychology professor who studies sex, human sexuality and cultural norms was disciplined for comments made about his personal sex life and students' sex lives
- GMU sanctioned the professor for speech outside of his curricula, formal scholarship or other published work that could not be connected to a larger public discourse or matter of public concern
- Fourth Circuit: Although professor's research, publishing and teaching about sex may qualify as matters of public concern, speech at issue in the case "veered well outside" the professor's teaching and scholarship "into areas of private, personal interest"
- Additional Considerations:
  - First Amendment protections not applicable to private institution
  - Check handbook and contractual language to determine limitations



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# CASE STUDY #5 – Faculty Free Speech

A tenured professor at the University of South Dakota posts a controversial personal opinion on the professor's public social media account about a political figure's death. The post includes harsh language and identifies the professor's institutional affiliation. The institution places the professor on leave, citing violations of professionalism and conduct policies.

## What Do You Do?

- Do you initiate disciplinary proceedings or protect the professor's speech as personal and constitutionally protected?
- How do you balance institutional reputation with faculty rights?
- What message do you send to students, faculty and the public?

## Considerations:

- Was the speech made as a private citizen or in an official capacity?
- Does the post violate institutional policies or create disruption?
- How do you respond to external pressure (e.g., media, political figures, online campaigns)?
- What precedent does your decision set for future cases?



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# CASE STUDY #5 – Faculty Free Speech

Hook v. Rave, No. 4:25-CV-04188-KES (D.S.D. Sep. 24, 2025)

## Background:

- Michael Hook, tenured art professor at the University of South Dakota, was placed on leave with “intent to terminate” after posting inflammatory remarks about Charlie Kirk on his Facebook page
- Post included harsh language and identified Hook as a USD professor
- Hook filed Motion for Temporary Restraining Order

## University’s Position:

- Cited violations of two policies:
  - Professional misconduct and abuse of power
  - Public speech must reflect institutional values and clarify personal vs. institutional views

## Legal Ruling:

- District Judge Karen Schreier ordered Hook’s reinstatement
- Found Hook’s speech was made as a private citizen on a matter of public concern
- Identifying as a professor online did not make the post part of his job duties
- Case ultimately dismissed on October 3 after South Dakota Board of Regents agreed not to terminate Hook



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# Ways to Manage Legal Hurdles



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# Why Management Matters

- Legal hurdles do not go away on their own – they are either effectively managed or intensify
- You cannot fully eliminate risk, but you can relieve the pressure by anticipating challenges, engaging compliance teams and building proactive structures
- Methods to relieve pressure points:
  - Effective Compliance Team
  - Reasonable, Communicated Operational Policies
  - Transparency and Communication
  - Contacting Legal Counsel



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# There is Good News



- Education matters
- Your commitment to student well-being matters
- You positively change lives every day, which matters more than we can ever calculate
- So . . . Stay the Course!!!



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