

2026 Presidents Institute  
**A Deeper Purpose**

January 4-7, 2026 ■ Signia by Hilton Orlando Bonnet Creek ■ Orlando, FL



The Council of Independent Colleges

# Legal Issues that Keep Presidents Up at Night

*11<sup>th</sup> Edition*

## Presenters

***Susan Llewellyn Deniker***  
Steptoe & Johnson PLLC

***Jim Newberry***  
Steptoe & Johnson PLLC



## *Overview*

- Trump Administration 2025
- Everything Else
  - Campus Climate
  - Financial Stress
- Final Suggestions for Better Sleep in 2026
- Questions

## ***The Trump Administration***

- Elimination of the Department of Education (ED)
- Diversity, Equity, and Inclusion (DEI) Mandates
- Compact for Academic Excellence
- Accreditation
- Financial Aid Restructuring
- International Student Issues/Immigration



## *Elimination of ED*

- Although Trump cannot eliminate ED without an act of Congress, the administration took steps to eliminate ED's substantive work
  - March 2025
    - 1,300 ED employees laid off; 300 accept offer to resign
    - Trump calls on Linda McMahon, United States Secretary of Education, to "take all necessary steps" to "facilitate" closing ED without eliminating its core functions
  - May 2025 – Federal judge orders that the 1,300 employees laid off be rehired
  - July 2025 – SCOTUS overturns federal district court ruling that temporarily halted layoffs

## *Elimination of ED*

- November 2025 – ED signs interagency agreements shifting responsibilities to, and creating “partnerships” with:
  - Department of Labor – Postsecondary Education Partnership
    - Administer grant programs authorized under the Higher Education Act
    - Management, assistance, and integration
  - Department of the Interior (DOI) – Bureau of Indian Education
    - Administer programs related to higher ed, career and technical education, and vocational rehabilitation
    - Management, assistance, and integration of Indian education programs with other DOI programs

## *Elimination of ED*

- Health and Human Services – Foreign medical accreditation and childcare for student parents
  - Childcare – Establish Child Care Access Means Parents in School Partnership to improve on-campus childcare/support student parents
  - Foreign Medical Accreditation – Review accreditation standards for foreign medical schools v. U.S. medical school standards
  - State
    - International education and foreign language studies
    - Improve efficiencies for programs administered under the Fulbright-Hays grant



## *Elimination of ED*

- Arguments for restructure
  - Addresses ED management issues
  - Responsive to those who believe education is a state and local responsibility
  - Alignment of education with workforce needs
  - Will streamline services and reduce bureaucracy
  - May increase accountability and performance

## *Elimination of ED*

- Arguments against restructure
  - Fragmentation of federal education laws and programs
  - Loss of specialized education expertise
  - Increased administrative burden
  - Risk that funding will be disrupted
  - Potential for inconsistent standards



## *DEI Mandates*

- 1/21/25 Executive Order “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”
- 2/14/25 Dear Colleague Letter “Regarding Title VI of the Civil Rights Act in light of Students for Fair Admission v. Harvard” – “The law is clear: treating students differently on the basis of race to achieve nebulous goals such as diversity, racial balancing, social justice, or equity is illegal under Supreme Court precedent.”

## *DEI Mandates*

- 3/1/25 FAQ re 2/14/25 DCL
  - Stated purpose was to "facilitate compliance" with Title VI, the Equal Protection Clause, and Students for Fair Admission v. Harvard
  - Key directives:
    - Prohibits race-based decisions
    - Provides DEI program "guidance"
    - Prohibits segregation
    - Recommends race-neutral alternatives
    - Responsible for third parties
    - Enforcement

## *DEI Mandates*

- April 2025: Federal court enjoins ED from enforcing DCL and FAQs in *NEA v. U.S. Dep't of Educ.*
- Both DCL and FAQ now have red legends attached to online versions stating ED will not enforce or otherwise implement those documents until further notice



## *DEI Mandates*

- Despite injunctions, the Department of Justice (DOJ) issued a July 29, 2025, memo identifying unlawful practices, including:
  - Granting preferential treatment based on protected characteristics
  - Prohibiting use of proxies for protected characteristics
  - Segregation based on protected characteristics
  - Unlawful use of protected characteristics
  - Training programs that promote discrimination or hostile environments

## *DEI Mandates*

- Formal enforcement tactics
  - Civil Rights Fraud Initiative
  - Civil Investigation Demands – DOJ and HHS
  - DOJ investigations and compliance reviews on:
    - Race-based exclusionary practices
    - Impermissible race-based scholarships
  - Encouraging whistleblowers to report
- Informal enforcement tactics – Private citizens reviewing IHE websites and then making complaints with ED's OCR or other federal agencies

## *Compact for Academic Excellence*

- Offers Institutions of Higher Education (IHEs) preferential access to federal benefits in exchange for adopting policy changes including:
  - Freeze tuition for five years
  - Cap international undergrad enrollment at 15%
  - Ban consideration of protected characteristics or their proxies in admissions and faculty hiring
  - Require widely-used standardized tests
  - Commit to institutional neutrality
  - Define gender roles “according to reproductive function and biological processes”



## *Compact for Academic Excellence*

- Originally offered to nine elite private and public IHEs
- Seven IHEs rejected the invitation; UT Austin and Vanderbilt have not rejected
- Trump extended invitation to all IHEs
- Valley Forge Military College and New College of Florida have expressed interest
- Grand Canyon Univ. stated that its policies and mission align with the Compact, but won't "officially" express interest until clarity is received on the Compact's initial rollout

## *Perspectives on Compact for Academic Excellence*

- “[The offer]... stinks of favoritism, patronage, and bribery in exchange for allegiance to a partisan ideological agenda.” – AAUP President, Todd Wolfson
- “Sheer political extortion” – Trinity Washington Univ. President, Pat McGuire
- “Any effort to reward or punish institutions based on their adherence to the views of government officials should trouble all Americans.” ACE President, Ted Mitchell
- “Secretary McMahon deserves credit for working to disincentivize the use of race or sex in college admissions.” U.S. Sen. Todd Young, (R) Indiana

## *Accreditation*

- April 23, 2025, Executive Order “Reforming Accreditation to Strengthen Higher Education”
  - Authorizes Secretary of Education to deny, monitor, suspend, or terminate federal recognition of accrediting agencies for poor performance or violations of federal civil rights laws
  - Directs Attorney General and Secretary of Education to investigate and take action to terminate unlawful discrimination by IHEs, including law and medical schools
  - Mandates Secretary of Education to realign accreditation with student-focused principles by taking certain steps

## ***Accreditation***

- The Higher Learning Commission's response – "Accrediting agencies are instrumental to promoting quality assurance and protecting student and taxpayer investments in higher education. While we firmly reject President Trump's mischaracterization of accreditors' role in the nation's postsecondary education system, we stand ready to work with the Secretary of Education on policies that will advance our shared mission of enhancing quality, innovation, integrity, and accountability."

## *Financial Aid Restructuring*

- Student Loan Limits
  - Eliminates Grad PLUS loans as of 7/1/26
  - Graduate loans more limited
  - Parent PLUS loan caps
  - As of now, no major changes to undergrad loans



## *Financial Aid Restructuring*

- Loan Repayment and Forgiveness:
  - Consolidated repayment plan with only two repayment options
  - Loan forgiveness becomes taxable
- Pell Grants:
  - Workforce Pell Grants expanded
  - Eligibility criteria tightened
  - Earnings test for undergraduate and graduate programs to enhance accountability

## *International Students/Immigration*

- Enrollment impact
- Visa revocations
- Heightened scrutiny for new visa applicants
- ICE enforcement actions on campus now allowed





## *Overview*

- Trump Administration 2025
- Everything Else
  - Campus Climate
  - Financial Stress
- Final Suggestions
- Questions



## *Campus Climate*

- Assassination of Charlie Kirk
- Protests/Antisemitism
- Challenges to Governance Models
- Bias Response Teams



## *Protests and Anti-Semitism*

- 1/29/25 Executive Order – “Additional Measures to Combat Anti-Semitism”
  - Reaffirmed 12/11/19 Executive Order “On Combating Anti-Semitism”
  - IHEs must monitor for and report activities of students and staff
- Office for Civil Rights letters sent to 60 IHEs warning of enforcement actions if they fail to fulfill obligations under Title VI to protect Jewish students

## *Challenges to Governance Model*

- Faculty/staff terminations and investigations based on social media posts
  - Wrongful termination
  - Breach of contract (faculty handbook)
- Academic freedom concerns
- Security v. censorship

## *Challenges to Governance Model*

- Shared governance/academic freedom
  - Challenges to courses on race/diversity and gender
  - Grant cancellations
- Challenges to tenure
  - State legislation weakening tenure, including “post-tenure review” with termination rights
  - Requirements for “intellectual diversity”
  - While most 2025 attention has been focused on public IHEs, those challenges to tenure will shape faculty market for private IHEs

## ***Bias Response Teams***

- SCOTUS declined to hear First Amendment challenge to Indiana University's use of bias response teams – *Speech First, Inc. v. Pamela Whitten, et al.*
  - Justice Thomas dissenting argued that college bias-response teams may chill speech because they may cause students to self-censor
  - Justice Thomas stated that SCOTUS should have resolved the split
- The Fifth, Sixth, and Eleventh U.S. Circuit Courts of Appeal have found that bias response policies “objectively chill student speech”

## *Financial Stress*

- Consider fiduciary duty obligations of officers and trustees
- Endowment management under Uniform Prudent Management of Institutional Funds Act (UPMIFA)
- Downsizing/restructuring/eliminating programs
  - Faculty handbook issues
  - Early exit plans
- Dealing with the Triad
- Timing issues are critical for exploring mergers, obtaining needed substantive changes, and implementing closures



## *Overview*

- Trump Administration 2025
- Everything Else
  - Campus Climate
  - Financial Stress
- Final Suggestions
- Questions

## *Suggestions for Better Sleep in 2026*

- Review policies/scholarships/certifications/websites for language that is incompatible with Executive Orders and guidance from agencies
- Pay special attention to language in DEI policies and practices to limit ability of Internet trolls to find fault with public-facing web pages
- Revisit/establish compliance program
- Seek counsel if ICE arrives on campus
- Participate in NAICU's legislative visits – presence in DC matters
- Hunker down!



*Questions?*



## **Disclaimer**

*These materials are public information and have been prepared solely for educational purposes. These materials reflect only the personal views of the authors and are not individualized legal advice. It is understood that each case and/or matter is fact-specific, and that the appropriate solution in any case and/or matter will vary. Therefore, these materials may or may not be relevant to any particular situation. Thus, the presenters and Steptoe & Johnson PLLC cannot be bound either philosophically or as representatives of their various present and future clients to the comments expressed in these materials. The presentation of these materials does not establish any form of attorney-client relationship with the authors or Steptoe & Johnson PLLC. While every attempt was made to ensure that these materials are accurate, errors or omissions may be contained therein, for which any liability is disclaimed.*



## *Contact Us*



**Susan Llewellyn Deniker**

(304) 933-8154  
susan.deniker@steptoe-johnson.com



**Jim Newberry**

(502) 423-2052  
jim.newberry@steptoe-johnson.com



**Thank you for attending  
this session!**