

# Potential Higher Education Legal Implications of the New Presidential Administration

Legal Affairs Monthly Training Session

February 5, 2025

# What is a Law?

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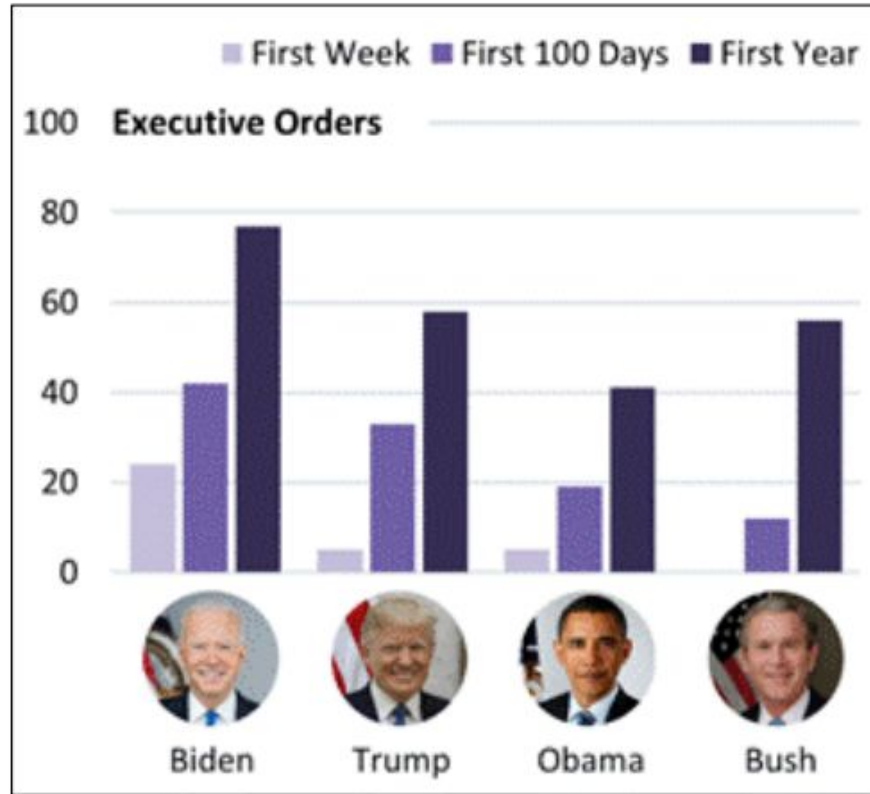
***Practice Areas:*** *faculty-related issues,  
Title IX and other civil rights issues,  
threat assessment, governance, and more!*

***Fun Fact:*** *I once chased (and caught!) a  
purse-snatcher in Rome, Italy*



## Sources of Law

- **Federal Statute** = law passed by Congress and signed by the President
- **Regulations** = rules enacted by an agency (Department of Education, Department of Justice, Department of Labor, etc.) that interpret a federal statute
- **Agency Guidance** = advice (including memos, bulletins, staff manuals, letters) provided by an agency regarding its current interpretations and enforcement standards
- **Executive Order** = directive from the president, usually to administrative agencies, that manages operations of the federal government



**Source:** 2024 Congressional Research Service (CRS) analysis of *Federal Register* data. This graphic was prepared by CRS Visual Information Specialist Juan Pablo Madrid.

\* The current Trump administration issued 37 executive orders during its first week and is also on track to issue more EOs during its first 100 days than the prior four administrations.

# Future of the Department of Education

*Amy Kelso, Senior Associate General Counsel*

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*Practice areas: Policies, contracts, international programs, student accountability, risk management, faculty & academic affairs*

*Fun facts:*

- *I live in Asheville and have worked in the UNC Charlotte Office of Legal Affairs **remotely** since 1997 – yes before cell phones, Zoom, and wireless internet connections!*
- *I have lived in England for two separate years in my life*
- *I love word puzzles and really challenging jigsaw puzzles*
- *I have three standard poodles – white, black, & a tri-colored puppy ❤️*



# Key Higher Ed Programs Administered by Dept. of Education

In 1979, Congress passed the Department of Education Organization Act, signed by President Carter, establishing the Department of Education. By combining offices from several federal agencies, the Department began operations in May 1980.

Key higher ed programs:

- [Federal Student Aid](#): Grants, federal student loans, Federal Work-Study programs (Department issues about \$100 billion in student loans and \$30 billion in Pell Grants each year)
- [Accreditation](#): Ensuring educational quality standards (ours is SACSCOC)
- [Campus Safety & Security](#): Campus Security Act, Clery Act, crime statistics
- [FERPA](#): Privacy of student education records
- [Data Collection](#): Collects and analyzes data for use by the public, administrators, policy-makers, and researchers for uses such as changing/improving educational programs and policies that impact students
- [Civil Rights](#): See next slide

# Office for Civil Rights (OCR)

[OCR](#) investigates and resolves violations of federal civil rights laws, which prohibit schools from discriminating against students and staff on discriminatory bases.

Each administration interprets and enforces civil rights laws differently, and may change regulations accordingly.

Key civil rights laws affecting higher education and enforced by OCR:

- [Race, Color, National Origin Discrimination \(Title VI\)](#): Prohibits discrimination on the basis of race, color, and national origin (equal access to educational opportunity)
- [Title IX](#): Prohibits sex-based discrimination in education programs and activities that receive federal financial assistance
- [Disability Discrimination Laws](#):
  - Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity operated by recipients of federal funds;
  - Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination based on disability by public entities, regardless of whether they receive federal financial assistance
- [Age Discrimination Act](#): Prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance



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# Can the Dept. of Education be eliminated?

- Eliminating a federal agency established by law would legally require an act of Congress
  - Congressional approval would require a supermajority of 60 votes in the Senate; there are 53 Republicans in the Senate, so 7 Democrats would be needed for approval
- Similar efforts to eliminate the Department have occurred in the past, but none have gained enough momentum to succeed
- Reports late Monday (Feb. 3) indicated that the administration is preparing to issue an Executive Order later this month that would “diminish” the Department absent Congressional approval
  - Might shut down all functions of the Department that aren’t explicitly required by statute
  - Might move certain functions to other federal departments or agencies
  - Might direct the Education Secretary to come up with a plan to dismantle the Department
- Some Executive Orders in the administrations of both parties have tested the limits of executive authority; some have been enjoined or restrained, but not without creating confusion at first
- Confirmation hearing for new Secretary of Education not yet scheduled
- To follow updates from the Dept. of Education, see the press releases in its Newsroom:  
<https://www.ed.gov/about/news>



# What happens to key federal programs if the Dept. of Education is restructured or eliminated?

Some responsibilities and functions might be transferred to other federal agencies or offices.

Experts and others have suggested:

- **Office for Civil Rights:** Functions might move to the **Justice Department's civil rights division**
- **Student Aid:** Functions might move to the **Treasury Department**, the **Department of Labor**, or a **new government office**
- **Data Collection:** Research and statistics-gathering functions for higher education might move to the **Treasury Department**
- **Accreditation:** Administration might authorize **states** to recognize accreditation agencies and/or authorize **state agencies** to act as accreditation agencies

The administration may also choose simply to cut staff, cut programs that are not explicitly required by law, or not to enforce certain laws.

Stay tuned....

# Employment Law Outlook 2025 and Beyond

*André Lindsay*

*Senior Associate General Counsel*

*Practice Areas: Employment & Real Property*

*Fun Fact: Loves planes.*





# Fair Labor Standards Act (FLSA) Update

- On July 1, 2024, the first phase of the U.S. Department of Labor (DOL)'s updated overtime rule went into effect, raising the minimum salary threshold for employees who are classified as “exempt” under the white-collar exemptions to the Fair Labor Standards Act.
- The second phase of the increase was set to take effect on January 1, 2025.
- ***What happened:*** On November 15, 2024, a U.S. District Court in Texas vacated the Biden administration's overtime rule. The court criticized the rule's rise in the salary threshold level as too high such that it displaced the duties test for the white-collar exemptions.
- ***What's next:*** The DOL has appealed but not much headway is expected. The pre-2024 salary threshold remain in effect for now.



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# Possible changes (*or not*) in 2025 and Beyond!

- Possibility for a smaller increase to the overtime salary threshold for exempt (EAP) employees.
- No change expected to recently passed employment legislations – PUMP Act and PWFA.
- Anticipated shift in enforcement priorities at the EEOC *and* possible updates to agency guidance.
- Leadership changes at the NLRB and EEOC Board of Commissioners.

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# Immigration

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*Assistant Vice Chancellor for Ethics, Policy, and Compliance*

**Practice Areas:** Compliance, Immigration, Public Records

**Fun Fact:** I adopted my French bulldog, Seppl, from a German family; he moved to the U.S. with me in 2018!



# Executive Orders

- **10 immigration and border-related actions, including:**
  - *Protecting the American People Against Invasion* (14159)
  - *Protecting the Meaning and Value of American Citizenship* (14160)
  - *Protecting the United States from Foreign Terrorists and other National Security and Public Safety Threats* (14161)
  - *Securing our Borders* (14165)
- **“Protected Area” enforcement guidelines**
  - Rescission of 2021 guidelines for Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) enforcement actions in or near a “protected area” (designated by the memo; includes universities).



# Deferred Action for Childhood Arrivals (DACA)

- On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several guidelines may request consideration of deferred action for a period of 2 years, subject to renewal.
- They are also eligible to request work authorization. Deferred action is an exercise of prosecutorial discretion to defer removal action against an individual for a certain period of time. Deferred action does not provide lawful status.
- On **Jan. 17, 2025**, the U.S. Court of Appeals for the Fifth Circuit issued a decision regarding the DACA Final Rule. Pursuant to the court's order, USCIS will continue to accept and process DACA renewal requests and accompanying applications for employment authorization under the DACA regulations at 8 CFR 236.22 and 236.23. USCIS will continue to accept initial requests but will not process initial DACA requests at this time. Current grants of DACA and related Employment Authorization Documents remain valid until they expire, unless individually terminated.



# H-1B Nonimmigrant Status

- This nonimmigrant classification applies to people who wish to perform services in a specialty occupation
- H-1B Modernization Rule
  - On December 17, 2024, U.S. Citizenship and Immigration Services (USCIS) released updates to the H-1B visa program
  - Effective January 17, 2025
- As of today, there are no updates/changes to this program



# Research Related Considerations

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**Practice Area:** Research

**Fun Fact:** I love water sports, and I am a licenced scuba diver.



Isabel Alele, *Associate General Counsel*

**Practice Areas:** Transactional Matters, Business Affairs and Research

**Fun Fact:** I love coffee and contracts.





# Overview

- I. The Funding Freeze: What Was It, and How Did It Happen?
- II. America First: Anticipating the Research Priorities of the Trump Administration
- III. Practical Guidance: Considerations for Researchers When Navigating the Ever-Evolving Legal Landscape



## Prequel to the Funding Freeze: Timeline of Trump's Executive Orders

- *Protecting the American People Against Invasion (1/20/25)*
- *Reevaluating and Realigning United States Foreign Aid (1/20/25)*
- *Putting America First in International Environmental Agreements (1/20/25)*
- *Unleashing American Energy (1/20/25)*
- *Ending Radical and Wasteful Government DEI Programs and Preferencing (1/20/25)*
- *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (1/20/25)*
- *Enforcing the Hyde Amendment (1/24/25)*



## The Funding Freeze: What Was It, and What Happened?

- Jan. 27, 2025: [Memo M-25-13](#) is issued by the White House. The Memo states, “Federal agencies must temporarily pause all...Federal financial assistance ... for *foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal.*”
- Jan. 28, 2025: Federal judge halts enforcement of memo.
- Jan. 29, 2025: The funding freeze memo is rescinded - ***but the executive orders remain in effect.***
- Jan. 31, 2025: Judge issues a ***Temporary*** Restraining Order.



# America First: Research Priorities of the New Administration

- Research Security
  - America First Trade Policy and the Directive to the Secretary of State (1/20/25)
- Energy
  - Unleashing American Energy (1/20/2025)
  - Declaring a National Energy Emergency (1/24/25)
  - Temporary Withdrawal...from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects (1/20/25)



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# America First: Research Priorities of the New Administration

- Artificial Intelligence, Quantum Computing, and Advanced Biotechnology
  - Removing Barriers to American Leadership in Artificial Intelligence (1/23/2025)
  - President's Council of Advisors on Science and Technology (1/25/25)



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# Practical Guidance: Considerations for Navigating The Ever-Evolving Legal Landscape

- The past is prologue – expect more change.
- Be mindful of the new administration’s priorities in light of the recently issued executive orders.
- Immediately communicate any changes to your award to the Division of Research.
- Ensure that agreements are explicitly contingent upon receipt of funding.



# Practical Guidance: Considerations for Navigating The Ever-Evolving Legal Landscape

- Review your contracts, and make sure you understand the university's obligations.
- Always seek to build flexibility for the institution into the agreement for termination, and terms of renewal.
- For additional guidance, utilize UNC Charlotte's [Contract Checklist](#).
- Lastly, reach out to the Division of Research or the Office of Legal Affairs if you have questions.



# Changes in Student Affairs

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**Practice Areas:** Student Affairs and Student Life,  
Civil Rights and Title IX

**Fun Fact:** I'm a Dallas Mavericks fan,  
so please be nice to me 🙏



# Anti-Discrimination Legislation

- **Title IX of the Education Amendments of 1972** prohibits sex-based discrimination in federally funded education programs and activities.
- **Title VI of the Civil Rights Act of 1964** prohibits discrimination based on race, color, or national origin in programs that receive federal funding.
- **Section 504 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability in programs or activities that receive federal financial assistance from the U.S. Department of Education.



# Title IX Regulations and Interpretations

- Title IX 2020 Rule
  - Standard defines “sexual harassment” as “conduct on the basis of sex” that is “[u]nwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”
- Title IX 2024 Rule
  - Standard expanded the scope of prohibited conduct to what is referred to as “sex-based harassment” adding “[u]nwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity...”
  - Proposed expansions to the definition of “sex.”
- *State of Tennessee v. Cardona*
- *Grimm v. Gloucester County School Board* (U.S. Fourth Circuit)

## Title VI and Executive Priority

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

*Title VI, 42 U.S.C. § 2000d et seq.*

- Anti-Semitism Executive Order, January 29, 2025
  - 60 day compliance deadline.
  - Primary Focus on anti-semitism.
- Department of Education Resources available.

# University Responsibility

- Title IX of the Education Amendments of 1972
  - The Department of Education’s Office for Civil Rights will enforce Title IX under the provisions of the 2020 Title IX Rule\*
  - Implementing Title IX Policies consistent with current case precedent.
- Title VI of the Civil Rights Act of 1964
  - Recent [Guidance](#) from the Department of Education outlines two primary responsibilities:
    1. Ensure an educational environment that is free from discrimination and harassment.
    2. Avoid suppressing protected speech or enacting policies that could disproportionately impact one group over another.

\*Department of Education, Dear Colleague Letter, February 4, 2025.

# Athletics

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Integrity and General Counsel*

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*Practice area: Delegating matters to superior attorneys*

*Fun fact: I am better at basketball than Jonathan*





# Key Athletics Issues to Watch

- **DOJ's Role in Antitrust Litigation Settlement**
  - The *House* settlement proposes direct payments to athletes and new governance rules.
  - The DOJ under Trump may challenge the agreement, withdraw objections, or take further legal action.
- **Title IX and NIL Payments**
  - The Biden administration's Title IX guidance links NIL payments to gender equity compliance.
  - The Trump administration may rescind this or push for legislative/executive action.



# Key Athletics Issues to Watch (continued)

- **Transgender Athlete Policies**
  - Federal agencies are directed to follow a binary definition of sex.
  - Lawsuits and federal legislative efforts will likely shape UNC Charlotte obligations.
  
- **Student-Athletes as Employees**
  - Reconstituted NLRB will likely stall some employee recognition efforts.
  - Alternative legal avenues, including legislation and lawsuits, remain.



**Feel free to reach out to us with  
any questions**

<https://legal.charlotte.edu/directory/attorneys>



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