



A Discussion of the Trump Administration's Anticipated Priorities for Higher Education

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Today's Agenda

- Political and Regulatory Environment
- Diversity, Equity, and Inclusion (DEI)
- Title VI
- Athletics and Gender Identity
- Q&A

Higher Education and the Trump Administration

- Schools have been at the forefront of various social and political issues over last 8 years
 - DEI, antisemitism, and gender, among others
- President Trump campaigned on these specific issues and said his “recent election [was] a mandate.”
- Congressional Republicans see these issues as multi-purpose.

Diversity, Equity, and Inclusion (DEI)

Trump Campaign Promises Related to DEI

- Spoke against “socially engineer[ing] race and gender into every aspect of public and private life”
- Outlined plans to “dismantle the DEI bureaucracy” and end institutional (public and private) emphasis on diversity initiatives
- Vowed to end “gender extremism”

SCOTUS *Students for Fair Admissions* Decision

Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, and Students for Fair Admissions Inc. v. University of North Carolina et al.

- Limited, if not effectively ended, use of affirmative action in college admissions
- Unclear how the decision extends to other programs beyond admissions
- Supreme Court later decided not to accept case challenging admissions policies at a competitive Virginia public magnet high school administrators said were designed to mitigate socioeconomic and geographic barriers
 - Policy remains in place despite dissent from two justices

Biden Administration Actions

- Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government)
- Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce)
- Allocated significant resources to support DEI initiatives across various federal agencies

Past Trump Administration Actions

- Supported expanded funding of HBCUs
- “1776 Commission” to respond to the “1619 Project”
- September 2020 Executive Order on Combating Race and Sex Stereotyping, which restricted diversity training
- Sought to roll back disparate impact protections under Title IV of the 1964 Civil Rights Act

Trump January 21, 2025 Executive Order

- EO: “...[IHES] have adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called [DEI] or [DEIA] that can violate the civil-rights laws of this Nation.”
- In government and contracting:
 - Requires OFCCP to cease “promoting ‘diversity’” and taking “affirmative action”
 - Terminates DEI offices and programs in federal government
- In the private sector:
 - Seeks a plan from agencies about measures they will take in private sector
 - “[E]ach agency shall identify:”
 - “Up to nine potential civil compliance investigations” including “[IHES] with endowments over 1 billion dollars”
 - “Litigation that would be potentially appropriate for Federal lawsuits, intervention, or statements of interest”

Trump January 21, 2025 Executive Order (cont.)

- “Within 120 days of this order, the Attorney General and the Secretary of Education shall jointly issue guidance to all State and local educational agencies that receive Federal funds, as well as all [IHEs] that receive Federal grants or participate in the Federal student loan assistance program under [Title IV] regarding the measures and practices required to comply with [*Students for Fair Admissions.*.]”
- “This order does not prohibit persons teaching at a Federally funded institution of higher education as part of a larger course of academic instruction from advocating for, endorsing, or promoting the unlawful employment or contracting practices prohibited by this order.”

Trump January 21, 2025 Executive Order (cont.)

- Will likely be written into projects with the Department of Education, National Science Foundation, etc.
- OMB and FAR Council likely to issue additional guidance regarding the new executive order
- Several actions require appointees to be confirmed first
- Will likely face legal challenges

Interaction with State Law

- Some states have enacted laws prohibiting affirmative action in public institutions
- Certain states have also limited or banned mandatory DEI training programs
- In Florida, Republican Gov. Ron DeSantis vetoed state grant funding for the arts over festivals with LGBT content

How to Prepare and Be Ready

- **Pre-Comply**
 - Adopt the spirit of the executive order
 - Even where no law exists, still facing pressure on funding (including research grants) and support for litigation
 - Eliminate DEI programs, modify admissions and hiring practices
- **Reframe**
 - Comply with the letter of the law, but continue to promote diversity and inclusivity
 - Emphasize socioeconomic diversity, first-generation college students, and other underrepresented groups not reliant on race, national origin, etc.
 - Downplay diversity language in marketing and other materials
- **Wait and See**

How to Prepare and Be Ready (cont.)

- Evaluate funding sources and potential financial pressure points
- Review and update policies and programs
 - DEI policies
 - Admission policies and recruitment (for both students and employees)
 - Scholarship programs
 - Student support services and affinity groups
- Engage stakeholders
 - Involve faculty, students, and community leaders in shaping new initiatives
 - Collaborate between your internal departments and legal/compliance
- Prepare for administration action and litigation
 - Document the educational benefits and goals of policies
 - Use data-driven approaches to track the impact of DEI programs/their dissolution

Title VI

Trump Campaign Promises Regarding Title VI Enforcement

- “My first week back in the Oval Office, my administration will inform every college president that if you do not end antisemitic propaganda they will lose their accreditation and federal taxpayer support. We will not subsidize the creation of terrorist sympathizers. Next, I will inform every educational institution in our land that if they permit violence, harassment, or threats against Jewish students the schools will be held accountable for violations of the civil rights law.”
 - *September 19, 2024, NBC News*

Biden Administration: OCR Guidance Post-Oct. 7th

- Dear Colleague Letters: (Nov. 7, 2023 & Mar. 14, 2024)
- Dear Colleague Letter: (May 7, 2024)
 - Set forth the legal framework for evaluating discrimination under Title VI
 - First Amendment Considerations
 - Tools to Respond
 - Reasonable Person Standard
 - Totality of the Circumstances

Biden Administration: Recent OCR Resolution Agreements

- School failed to analyze the pattern or the cumulative effect of the series of thefts, which created a hostile environment
- School failed to assess whether a hostile environment existed after complainant failed to respond to School's request to meet
- School failed to communicate the results and actions taken to both the offender and affected students
- School failed to communicate opposition to stereotypical, derogatory opinions

In The News

- Prominent elite university settled two lawsuits brought by Jewish students and adopted *International Holocaust Remembrance Association's* definition of antisemitism:

“Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”

In the News

- Another prominent elite university opened an immediate investigation and took swift action to condemn and punish students who disrupted a History of Modern Israel course taught by an Israeli professor by entering and distributing antisemitic literature
 - Multiple public statements were issued
 - Three students identified were suspended
 - Proposal to the Senate Faculty Affairs to institute a ban on face coverings and masks in classrooms

Trump Administration Actions: First Two Weeks

- Issued Executive Order *Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats*
 - Ensures that “aliens otherwise already present in the United States” aren’t hostile to its citizens, culture, government or institutions, and “do not advocate for, aid or support designated foreign terrorists and other threats to our national security”
- Issued Executive Order today that:
 - Charges DOJ and AG with taking “immediate action” to prosecute antisemitic crimes like vandalism and intimidation as well as investigate “anti-Jewish racism in leftist, anti-American colleges and universities”
 - Promises to deport and revoke the student visas of those deemed sympathetic to Hamas
 - Directs all federal agencies within 60 days to review and report any criminal and civil authorities the agency has that can be used to address antisemitism

How to Prepare and Be Ready

- Investigate and take action
- Look at the totality of the circumstances
- Retain documents and keep detailed records
- Make clear how to report bias, discrimination, and harassment
- Communicate results, especially with the victim
- Make public statements
- Promote nondiscriminatory values
- Apply correct legal standards
- Review and revise Title VI policies
- Provide annual training to all faculty, staff, and students
- Administer a climate assessment

Athletics and Gender Identity

What Has Trump Promised?

- Trump proclaimed that he will “keep men out of women’s sports” and states “under the Trump administration...there are only two genders, male and female.”
 - *December 22, 2024, Turning Point America Fest*

State of Play: Federal Action Prior to Inauguration

- Biden Administration attempted to extend Title IX protections to transgender people
 - Final Rule (2024) went into effect in August; faced legal challenges in 25+ states
 - Final Rule on Transgender Athletes – dropped in December 2024
 - *Tennessee v. Cardona* – federal court struck down Biden’s 2024 Rule before inauguration
- Legislation – House Of Representatives passed “Protection of Women and Girls in Sports Act”

State of Play: Pending Litigation

- 25 states have laws that ban transgender women from women’s sports, though the scope of those laws vary (i.e., K-12 or higher education)
- State law litigation
 - *B.P.J. v. WVSBE* – challenge to WV law in Fourth Circuit
 - *Hecox v. Little* – challenge to ID law in Ninth Circuit
 - *Texas AG v. NCAA*
 - *San Jose State Volleyball v. Mountain West Conference*

AL	AZ	AR
FL	ID	IN
IO	KS	KY
LA	MS	MO
MT	NH	NC
ND	OH	OK
SC	SD	TN
TX	UT	WV
WY	AK*	VA*

*Regulations only

Trump's First Moves

Actions Since Inauguration

- 1/20/25 – Executive Order declaring that the federal government only recognizes two genders
- 1/20/25 – Repeal of Biden's Executive Order titled "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation," which Biden issued on his first day in office
- 1/27/25 – Executive Order that directs the Pentagon to determine a policy for transgender service members based on readiness within 30 days
- 1/28/25 – Executive Order that cuts federal support for gender transitions for those under age 19

How to Prepare and Be Ready

- Revise Title IX policies to comport with Trump's 2020 Final Rule, and ensure all other materials are updated accordingly
- Monitor legal challenges to Trump's Title IX regulations or Executive Orders to determine applicability in your state
- Review state and local law on transgender rights and participation, dovetail with policy priorities
- Review NCAA and Athletic Conference policies on inclusion of transgender student-athletes and watch for movement

Potential Next Developments

Examples of Possible Actions

- Executive Actions
 - Additional executive orders
 - Withhold or changes to federal funding
 - Political appointments
- Enforcement
 - Revoke visas
 - Levy fines or withhold Title IV funding
- Rule-making/Agency Actions
 - Write rules that shape policy (e.g., revoke accreditation, explicitly exclude trans students from sports, remove diversity projects from grant awards)

Examples of Possible Actions (Cont.)

- Legislation
 - Pass laws (e.g., declaring there are only two genders, increasing/instituting new endowment taxes, banning DEI in the private sector)
 - Budget reconciliation
- Reorganization/Elimination
 - Eliminate entire departments or agencies (e.g., move OCR to DOJ from ED)
- Legal Challenges
 - How will federal courts respond to challenges to everything mentioned?

Questions?

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