



LAW IN MOTION: NAVIGATING NEW LEGAL DEVELOPMENTS IN CALIFORNIA COMMUNITY COLLEGES

PRESENTED BY:

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Agenda

- Context: anti-discrimination laws, free speech rights, and Administrative Procedure Act
- Overview: Number of Executive Orders / Actions Issued Under Current Presidential Administration
- Threats to Federal Funding, Federal District Court Decisions, and Restrictions Under the First and Tenth Amendments, Title VI, and the Administrative Procedure Act
- Other Actions Affecting Postsecondary Educational Institutions:
 - Increased Immigration Enforcement
 - Title IX

Unlawful Discrimination and Harassment

Colleges have a general duty, and authority, to protect students and employees from unlawful discrimination and harassment

- *US Constitution*
- *Title VI*
- *Title VII and Fair Employment and Housing Act*
- *Title IX*
- *California Constitution (incl. Prop. 209)*
- *Education Code*

Free Speech & APA – Core Principles

First Amendment

- Protects freedom of speech, expression, religion, assembly, and petition from government interference
- Ensures individuals can express ideas — even unpopular or controversial ones — without government retaliation

Limited Exceptions (where speech may be restricted):

- Obscenity; Libel/slander; Incitement or threats; Substantial disruption; Violation of neutral college policies

Viewpoint-based restrictions prohibited

- No “heckler’s veto” – speech can’t be silenced because others oppose it
- “Time, place, and manner” limits allowed if: Content-neutral; Reasonable; Not suppressing specific views

Administrative Procedure Act

- Formal rule-making procedure for issuing or repealing regulations
- Restricts “arbitrary and capricious” government action

Takeaways – Student and Employee Groups and Spaces

- District-Sponsored Employee Resource/Affinity Groups and College Events/Spaces
 - Should have a clear business or institutional purpose using neutral criteria
 - Open and welcoming to all
 - Avoid language or actions that may create a hostile environment
 - Race- or gender-related themes/discussion can be lawful if above criteria are met
- Registered Student Organizations: requirements for members

Overview of Number of Executive Orders / Actions

- 214 Executive Orders Issued by the Current President Donald Trump Administration (as of November 15, 2025)
- First President Donald Trump Administration (220 Total)
- President Joe Biden Administration (160 Total)
- President Barack Obama Administration, First / Second Terms Combined (276 Total)
- President George W. Bush Administration, First / Second Terms Combined (291 Total)
- President Franklin D. Roosevelt Administration, First - Fourth Terms Combined (3726 Total)

(Source: The American President Project, University of California, Santa Barbara)

EXECUTIVE ORDER: DISMANTLING THE U.S. DEPARTMENT OF EDUCATION

- **March 20, 2025:** President Trump signed Executive Order titled, “Improving Education Outcomes by Empowering Parents, States, and Communities.”
- Executive Order provides, in part: “The Secretary of Education shall, to the maximum extent appropriate and permitted by law, take all necessary steps to facilitate the closure of the Department of Education and return authority over education to the States and local communities while ensuring the effective and uninterrupted delivery of services, programs, and benefits on which Americans rely.”
- The U.S. Department of Education workforce has been reduced by nearly 50% since President Trump took office in January 2025. (Source: Center for American Progress)
- The Office for Civil Rights (OCR) of the U.S. Department of Education went from 12 to 7 regional offices and half its approximate 600 people have been separated from their employment. (Source: Center for American Progress)
- Approximately 466 staff members were cut from the U.S. Department of Education as part of a reduction-in-force during the recent government shutdown. (Source: Education Week)
- **November 18, 2025,** additional actions were taken by the federal government that will affect six offices of the U.S. Department of Education by outsourcing their work to other federal agencies--

EXECUTIVE ORDER: DISMANTLING THE U.S. DEPARTMENT OF EDUCATION

- The educational programs, services, grants, funding, and other initiatives of the six offices of the U.S. Department of Education will be transferred to other federal governmental agencies, such as the U.S. Departments of, Health and Human Services, Labor, and the Interior;
- Potential move of civil rights enforcement from OCR to the U.S. Department of Justice; however, not part of November 18th announcement.

Other Key Executive Orders / Actions Affecting Higher Education

- Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (January 20, 2025)
- Ending Illegal Discrimination and Restoring Merit-based Opportunity (January 21, 2025)
- Additional Measure to Combat Antisemitism (January 29, 2025)
- Keeping Men Out of Women's Sports (February 5, 2025)
- Reforming Accreditation to Strengthen Higher Education (April 23, 2025)
- Transparency Regarding Foreign Influence at American Universities (April 23, 2025)
- Protecting American Communities from Criminal Aliens (April 28, 2025)
- Ensuring Transparency in Higher Education Admissions (August 7, 2025)
- Restriction on Entry of Certain Non-Immigrant Workers (September 19, 2025)

OCR Dear Colleague Letter (DCL) (February 14, 2025)

- **February 14, 2025**—OCR issued DCL: Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard to "clarify and reaffirm the nondiscrimination obligations of schools and other entities that receive federal financial assistance" under Title VI of Civil Rights Act.
- **March 1, 2025**—OCR issued a "Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act" to "anticipate and answer questions" that might be raised in response to the DCL.
- **On April 3, 2025**—The U.S. Department of Education directed each state's department of education (and local education agencies) to certify compliance with Title VI in order to continue to receive federal financial assistance.

District Court Decision

- **Nat'l Educ. Ass'n, et al. v. U.S. Dep't of Educ., et al., Civil No. 25-cv-091-LM (D.N.H. April 24, 2025)**
- Arguments: DCL is unconstitutionally vague in violation of the 5th Amendment right to Due Process (void-for-vagueness challenge); penalizes speech on the basis of content and viewpoint in violation of the First Amendment; and violates the Administrative Procedure Act (APA).
- District Court Decision on a Motion for a Preliminary Injunction:
 - DCL likely violates the Fifth Amendment's Due Process Clause because it fails to provide "fair notice of the conduct it prohibits" and "it authorizes or encourages arbitrary enforcement."
 - DCL likely violates the First Amendment due to viewpoint discrimination, highlighting that "plaintiffs are likely to be successful in arguing that defendants are attempting to coerce third parties 'to punish or suppress disfavored speech on [their] behalf.'"

District Court Decision

- **Nat'l Educ. Ass'n, et al. v. U.S. Dep't of Educ., et al., Civil No. 25-cv-091-LM (D.N.H. April 24, 2025)**
- District Court's Decision on a Motion for a Preliminary Injunction (Cont'd):
 - DCL likely violates the APA because it is contrary to a constitutional right, exceeds the Department's statutory authority, and is contrary to law, and violates the notice and comment requirement.
 - Department/OCR enjoined from enforcing and/or implementing the DCL, the FAQ, End DEI Portal, and Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification Under Title VI and SFFA v. Harvard against the "plaintiffs, their members, and any entity that employs, contracts with, or works with one or more plaintiffs or for one or more of plaintiffs' members."
 - The U.S. Department of Education subsequently clarified that it would not enforce the DCL, FAQ, and DEI-related actions based on the district court's decision.

U.S. Department of Justice (“DOJ”) Establishes “Civil Rights Fraud Initiative” (May 19, 2025)

- The Civil Rights Fraud Initiative “will use the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws. Violations of the False Claims Act can result in treble damages and significant penalties.”
- In its May 19, 2025 Memorandum, the DOJ provided: “The False Claims Act is the Justice Department’s primary weapon against government fraud, waste, and abuse. . . . It is implicated when a federal contractor or recipient of federal funds knowingly violates civil rights laws—including but not limited to Title IV, Title VI, and Title IX, of the Civil Rights Act of 1964—and falsely certifies compliance with such laws. Accordingly, a university that accepts federal funds could violate the False Claims Act when it encourages antisemitism, refuses to protect Jewish students, allows men to intrude women’s bathrooms, or requires women to compete against men in athletic competitions. Colleges and universities cannot accept federal funds while discriminating against students.”
- The DOJ further provided: “The False Claims Act is also implicated whenever federal-funding recipients or contractors certify compliance with civil rights laws while knowingly engaging in racist preferences, mandates, policies, programs, and activities, including through diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity, or national origin.”

DOJ Issues Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination (July 29, 2025)

- The DOJ Guidance was issued to “clarif[y] the application of federal antidiscrimination laws to programs or initiatives that may involve discriminatory practices, including those labeled as Diversity, Equity, and Inclusion (“DEI”) programs. Entities receiving federal funds, like all other entities subject to federal anti-discrimination laws, must ensure that their programs and activities comply with federal laws, must ensure their programs and activities comply with federal law and do not discriminate on the basis of race, color, national origin, sex, religion, or other protected characteristics—not matter the program’s labels, objectives, or intentions.”
- The DOJ Guidance highlights the current presidential administration’s viewpoint on what it would consider to be violative Title IV / the Equal Protection Clause of the 14th Amendment

US DOJ Memorandum: July 29, 2025

- Some examples of practices the US Attorney General asserts are unlawful:
 - Race-Based Scholarships or Programs
 - Preferential Hiring or Promotion Practices
 - Access to Facilities or Resources Based on Race or Ethnicity
 - Use of Proxies for Protected Characteristics
 - Segregation Based on Protected Characteristics
 - Failing to Maintain “Sex-Separated” Athletic Competitions and Intimate Spaces
 - Race-Based Training Sessions
 - DEI Training that Promotes a Hostile Environment Based on Protected Characteristics

US DOJ Memorandum: July 29, 2025

- Some examples of practices the US Attorney General recommends:
 - Ensure Inclusive Access
 - Focus on Skills and Qualifications
 - Prohibit “Demographic-Driven Criteria”
 - Document Legitimate, Nondiscriminatory Rationales
 - Scrutinize Neutral Criteria for “Proxy Effects”
 - Eliminate “Diversity Quotas”
 - Avoid Exclusionary Training Programs
 - Include Nondiscrimination Clauses in Third-Party Contracts; Monitor Compliance
 - Establish Anti-Retaliation Procedures and Reporting Mechanisms

Recent Agreements between Federal Government and Universities/ Colleges – Brown University

- Pay \$50 million over 10 years to state workforce development organizations;
- Provide specified safe and equitable opportunities and spaces for women;
- Not to perform gender reassignment surgery or prescribe puberty blockers or hormones for minors for the purpose of aligning the child's gender identity;
- Not to have programs that promote unlawful efforts to achieve race-based outcomes, quotas, diversity targets or similar efforts;
- Cease any provision of benefits or advantages to individuals on the basis of protected characteristics;
- No use of personal statements, diversity narratives, or any applicant reference to racial identity in admissions;
- Take significant, proactive steps to combat antisemitism; and
- Engage an external party to conduct a campus climate survey, including the climate for students with shared Jewish ancestry.

Recent Agreements between Federal Government and Universities/ Colleges – University of Virginia

- The federal government and the University of Virginia affirmed “the importance of and their support for civil rights.”
- The University affirmed “its commitment to complying with federal civil rights laws and agrees to apply Civil Rights Law internally according to the Department of Justice’s “Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination” of July 29, 2025, so long as the that Guidance remains in force and to the extent consistent with relevant judicial decisions.”
- Then UVA President Jim Ryan resigned from his position as head of the University. In his November 14, 2025 resignation letter, former President Ryan stated, “Too often, people within the DOJ and on our own Board have implied that if we were following policies that they did not favor, we’re somehow doing something illegal. That is not the case obviously. DEI, for example, is not itself illegal. One can do illegal things in the name of DEI, just like one can do illegal things in the name of promoting viewpoint diversity. But diversity itself, including viewpoint diversity, is not against the law.”

American Association of University Professors, et al., v. Donald J. Trump (Case No. 25-cv-078640RFL)

- November 14, 2025: Order Granting Preliminary Injunction By District Court : “The undisputed record demonstrates that Defendants have engaged in coercive retaliatory conduct of the First Amendment and Tenth Amendment. It also shows that they have flouted the requirements of Title VI and IX and cancelled funding in an arbitrary and capricious manner while ignoring required procedural safeguards.”
- In support of her decision, District Court Judge stated: “Plaintiffs show that the Administration and its executive agencies are engaged in a concerted campaign to purge ‘woke,’ ‘left,’ and ‘socialist’ viewpoints from our country’s leading universities. Agency officials . . . have repeatedly and publicly announced a playbook of initiating civil rights investigations of preeminent universities to justify cutting off federal funding, with the goal of bringing universities to their knees and forcing them to change their ideological tune. Universities are then presented with agreements to restore federal funding under which they must change what they teach, restrict student anonymity in protests, and endorse the Administration’s view of gender, among other things. Defendants submit nothing to refute this.”

Harvard College v. HHS et al.

- Offer to Harvard to continue over \$2B in federal grants in exchange for:
 - External audit to ensure “viewpoint diversity”
 - Abolish all “ideological litmus tests” in admissions and hiring
 - Achieve critical mass of new faculty and students to “balance viewpoint diversity”
 - Focus on scholarship over activism
 - Shutter all “DEI programs”

Harvard v. HHS – Court Decision

- First Amendment Violation
 - Retaliated against Harvard based on its speech
 - Imposed content-and viewpoint-based burdens
- Title VI Violation
 - Procedures to terminate funding not followed
- Administrative Procedure Act Violation
 - Arbitrary and capricious decision

California's Position on DEI and DEIA

- Existing federal and California laws and regulations already prohibit discrimination or preference based on membership in protected classifications, for example:
 - Title VII, ADEA, ADA, Fair Employment and Housing Act
 - Proposition 209 (1996 addition to Calif. Constitution – no discrimination or preferential treatment based on race, sex, color, ethnicity, or national origin)
 - 2 CCR 11016, 11017 – Pre-employment practices and employee selection for California employers generally
 - 5 CCR 51200-51201, 53000-53029 – EEO requirements for CCDs
 - California expressly prohibits discrimination based on gender, gender identity, gender expression, sexual orientation (these terms are not used in Title VI, Title VII, Title IX)
- Title 5 regulations re: DEIA in CCD employee evaluations and tenure review – includes specific defined terms; each CCD to develop local criteria and procedures

Court-Informed DEI Takeaways

- DEI programs can continue to exist at colleges and universities, if consistent and aligned with governing federal and state antidiscrimination laws;
- The DCL itself does not claim to state any new obligations or prohibitions—only re-stating existing legal requirements;
- Colleges and universities should identify, review, and evaluate all DEI programs with counsel to ensure compliance with Title VI, Title VII, Title IX and other applicable federal and state laws—conduct civil rights compliance audits;
- Colleges and universities should be prepared to demonstrate in a case of a complaint/investigation that their DEI programs do not discriminate or grant preferences in manner that violates Title VI or other governing federal and state laws.
- Know and understand current administration's interpretations/enforcement positions, potential conflicts with California law/policy, weigh risks, consult counsel

Takeaways - Recruitment and Employee Evaluations

- Measure criteria and processes against federal law and policy and California law and policy
- Federal law preempts if state law conflicts – but is there a conflict? (details matter)
- Consider institutional policies, values, risk tolerance
- Selection and evaluation criteria should be:
 - nondiscriminatory
 - objective/measurable
 - based on effective/efficient operations/student service
 - not based on employee's personal beliefs/politics
- Training of hiring and evaluation committees
- Consult legal counsel, maintain privilege

Takeaway – Title VI Team

- Title VI Team approach (similar to Title IX team)
- Questions
 - Do you need a separate team?
 - Who should be on your team?
 - What processes should be followed when a Title VI concern is raised?
 - Do you have a formal complaint? Do you need to investigate anyway?
 - Do you need to consider protected speech rights given the specific facts? Even if there is protected speech, should you provide supportive measures?
 - Are your policies and procedures up to date?

Immigration

- **White House EO—Protecting the American People from Invasion (January 20, 2025)**
 - Suspends entry into the United States by “aliens engaged in the invasion across the southern border” until “a finding that the invasion at the southern border has ceased.”
 - **Stated Rationale:** “ ... This order ensures that the Federal Government protects the American people by faithfully executing the immigration laws of the United States. ...”
- **U.S. Dept. of Homeland Security—Directive on Expanding Law Enforcement (January 20, 2025)**
 - Rescinded President Joe Biden’s 2021 immigration enforcement policy for Immigration and Customs Enforcement (“ICE”) and Customs and Border Protection (“CBP”). The second Trump Administration holds view that Joe Biden’s policy “thwart[ed] law enforcement in or near so-called ‘sensitive areas.’”

California's Position on Immigration Enforcement on Campus

Senate Bill 54 (California Values Act, eff. Jan 1, 2018):

Prohibits state and local law enforcement agencies, including school police and security departments, from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes. Includes requirements for educational institutions to adopt model policies limiting assistance with immigration enforcement.

Assembly Bill 21 (Access to Higher Education for Every Student (eff. Jan 1, 2018) (Amended the Donahue Higher Education Act):

Required postsecondary institutions, including CCDs, by March 1, 2019, to adopt and implement model policies developed by the Attorney General or equivalent policies pursuant to the California Values Act (SB 54) to include the following:

(1) Refrain from disclosing personal information about students/faculty/staff unless certain criteria are met, such as adherence to FERPA or in response to a judicial warrant; **(2)** Students/faculty/and staff are to notify the Chancellor/President, or designee, as soon as possible, if an immigration officer is expected to enter, will enter, or has entered campus to execute a federal immigration order; **(3)** Comply with a request of an immigration officer for access to nonpublic areas of the campus only upon presentation of a judicial warrant; **(4)** Advise all students/faculty/and staff that an immigration officer is to be referred to the Chancellor/President, or designee, to verify the legality of any warrant, court order, or subpoena; and **(5)** Maintain a contact list of legal services providers who can provide free legal immigration representation to students.

California's Position on Immigration Enforcement on Campus

California Attorney General Rob Bonta Issued Updated Guidance and Model Policies for Colleges and Universities in December 2024

(<https://oag.ca.gov/sites/all/files/agweb/pdfs/immigration/higher-education-guidance.pdf>)

1. Provides governing law and policy recommendations and model policies for:
 1. Gathering and Handling Student Information;
 2. Responding to Law Enforcement Requests for Access to Campuses and Residential Units for Immigration Enforcement Purposes;
 3. Responding to Law Enforcement Requests to Access Student Records for Immigration Enforcement Purposes; and
 4. Responding to Immigration Actions Against Students or Family Members

SB 98- Elementary, secondary, and postsecondary education: immigration enforcement: notification

- Approved by Governor September 20, 2025
- Existing law requires the Trustees of the California State University, the governing boards of community college districts, and independent institutions of higher education that are qualifying institutions for purposes of the Cal Grant Program, and requests the Regents of the University of California, to the fullest extent consistent with state and federal law, to implement various precautionary measures when federal immigration enforcement activities are undertaken on campuses of those segments, as specified, including, among others, that those postsecondary entities advise all students, faculty, and staff to notify the office of the chancellor or president, or their designee, as soon as possible, if they are advised that an immigration officer is expected to enter, will enter, or has entered the campus to execute a federal immigration order.
- This bill would require, until January 1, 2031, those postsecondary educational entities, and each campus of those postsecondary educational entities, to notify, as specified, all students, faculty, staff, and other campus community members who work on campus when the presence of immigration enforcement, as defined, is confirmed on campus. To the extent that the bill would impose new duties on community college districts, the bill would impose a state-mandated local program.

SB 627- Law Enforcement: Masks

- Approved by Governor September 20, 2025
- Require any law enforcement agency operating in California to, by July 1, 2026, maintain and publicly post a written policy limiting the use of facial coverings, as specified. The bill would exempt personnel of any agency from the crime of wearing a facial covering if an agency maintains a policy pursuant to this section no later than July 1, 2026. The bill would deem a policy consistent with these provisions for the purposes of that exception unless a member of the public, an oversight body, or a local governing authority challenges it. The bill would also impose a specified civil penalty against certain officers for tortious conduct, including, but not limited to, false imprisonment or false arrest of an individual while wearing a facial covering.

SB 805- Crimes

- Approved by Governor September 20, 2025
- On and after January 1, 2026, require a law enforcement officer operating in California that is not uniformed to visibly display identification that includes their agency and either a name or badge number to the public when performing their enforcement duties, except as specified. The bill would make a violation of these provisions a misdemeanor. The bill would define personnel of a law enforcement agency as any peace officer under California law and any federal law enforcement officer.

LEA Employees' Responsibilities

- LEA employees should continue to perform the duties of their positions.
- LEAs should develop a clear protocol to address any requests made by an ICE agent or other federal immigration enforcement official.
- For example, requests for access to a campus or student records should be immediately referred to the Office of the Chancellor or President, in consultation with Legal Counsel, to determine whether the request is lawful, e.g., supported by a valid judicial warrant, court order, or subpoena.

Responding to Requests for Information Related to Students' or Families' Immigration/Citizenship Status

Do not disclose information that might indicate a student's or family's citizenship or immigration status unless the information is for a legitimate educational purpose or is in response to a court order or subpoena.

1. An ICE administrative "warrant" is the most typical type used by immigration enforcement officers. An ICE warrant is not issued by a court judge.

Providing information about a student's or family's citizenship or immigration status to immigration authorities for immigration-enforcement purposes is **not** for a legitimate educational purpose under federal or state law.

Responding to Requests for Access to Students or School Grounds

Advise the officer that you must first receive direction from the Office of the Chancellor or a designated employee, except under exigent circumstances.

Community colleges are required to advise students, faculty, and staff to notify the Office of the Chancellor or President, or their designee, if they are advised that an officer engaged in immigration enforcement is expected to enter, will enter, or has entered the campus to execute an immigration order. Campus police should also be notified so that they are aware of immigration enforcement activity on campus.

When an Officer is Present on School Grounds for Immigration Purposes

- If the officer says exigent circumstances exist and demands immediate access to campus, comply with officer's orders and immediately contact the President or designee.
- Do not attempt to physically impede the officer, even if the officer appears to be exceeding the authorization. If an officer enters the premises without consent, document the officer's actions while on campus.
- If the officer wants to search or interview a minor student, contact the student's parent or guardian. Ask the officer to wait.
- If the officer has authorization to interview a student without the parent present, permit it but ask to stay with the student.

Immigration Enforcement-Take Aways

- Encourage student to update emergency contact information and to provide alternative contacts in case student is detained/unavailable.
- Appoint a point person to handle all immigration enforcement issues.
- Designate resources (counselors, centers, community partners) for students to process concerns and fears over immigration issues.
- Affirm your commitment to education regardless of immigration status.
- Review enrollment forms and procedures to ensure that immigration documents are not being collected.
- Make sure faculty and staff are aware of how to respond to immigration enforcement activity on campus. Share examples of what documents they might receive from immigration enforcement.

Title IX

- January 9, 2025 – *Cardona* Decision (Vacatur)
- January 20, 2025 – EO—Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
- February 5, 2025 – EO—Keeping Men Out of Women’s Sports
- July 9, 2025 – U.S. Dept. of Justice filed a civil lawsuit against CIF and CDE
- January 13, 2026 – *Little v. Hecox* (Transgender Athletes)
- January 13, 2026 – *West Virginia v. B.P.J.* (Transgender Athletes)

California's Position on Transgender Issues

- Education Code sections 220, 66250-66294 (Equity in Higher Education Act) – bars discrimination based on protected characteristics, including gender, gender identity, gender expression
- Cal. Attorney General Guidance - LGBTQ+ Discrimination Rights (<https://oag.ca.gov/lgbtq/rights>) – Includes the right to use restroom consistent with gender identity, to disclose (or not) gender identity regardless of age, to play on sports team that aligns with gender identity
- California Community College Athletic Association (3C2A) Bylaws
 - Bylaw 1, Section 1.11 Participation by Gender (last revised and effective 08/09/23) (https://3c2asports.org/Constitution/2024-25/Bylaw_1.pdf)

Question & Answer Session

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