

The Trump Administration's Condemnation of Diversity, Equity and Inclusion in Higher Education and How Schools Can Prepare

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Last week, the US Department of Education (ED) Office for Civil Rights (OCR) issued a [Dear Colleague Letter](#) (DCL) outlining the obligations of educational institutions pursuant to Title VI of the Civil Rights Act of 1964 and the 2023 US Supreme Court ruling in [Students for Fair Admissions, Inc. v. President and Fellows of Harvard College](#) (SFFA). The letter notes ED's intent to begin assessing compliance by February 28, 2025, and warns that institutions found to be in violation could risk losing access to federal funds.

The DCL comes on the heels of President Donald Trump's January executive order, "[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)" (EO). The EO directs federal agencies, including ED, to crack down on illegal "diversity, equity and inclusion" (DEI) programs that violate civil rights and identifies federally funded higher education institutions as a central focus of enforcement measures. The DCL, and [a related memorandum](#) issued by the US attorney general this month, build off of the EO and offer insight into the kinds of practices that could be considered "illegal discrimination."

Although the DCL does not create any new legal standards, and by its own terms only "provides notice of ED's existing interpretation of federal law," universities should regard it as a warning and take steps to avoid running afoul of the administration's crackdown on DEI initiatives. Below we dig into what practices constitute "illegal discrimination," outline the process for losing Title IV funds and address key steps that schools can take to prepare for the upcoming changes.

'Illegal discrimination' – What is it?

The DCL, relying on Title VI of the Civil Rights Act of 1964, the equal protection clause under the 14th amendment, and *SFFA*, provides the following test for assessing whether an educational institution is engaging in "illegal discrimination:" "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." The DCL goes on to say that "... educational institutions may neither separate or segregate students based on race, nor distribute benefits or burdens based on race."

Moreover, the DCL adopts a broader interpretation of *SFFA*, which was narrowly applied to prohibit considering race in **admissions policies**, to all decisions related to "... hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life." Although *SFFA* left open an institution's ability to pursue racial diversity through other race-neutral avenues, the DCL emphasizes that, under ED's *SFFA* interpretation, racial diversity, equity and inclusion as a goal is impermissible.

A memo issued by the US attorney general this month sheds further light on the types of DEI programs that may be considered illegal under the Trump administration. In defining illegal DEI programs that will be subject to investigations and penalties, the memo includes "programs, initiatives, or policies that discriminate, exclude, or divide individuals based on race or sex." However, "... educational, cultural, or historical observances – such as Black History Month, International Holocaust Remembrance Day, or similar events – that celebrate diversity, recognize historical contributions, and promote awareness without engaging in exclusion or discrimination" are permissible. Overall, the DCL and related guidance highlight the importance for institutions to carefully review existing programs that may lead to the exclusion of individuals or the denial of benefits based on race.

Loss of Title IV eligibility – What does it look like?

The DCL makes clear that ED will actively pursue sanctions against institutions of higher education that receive federal student aid dollars, and it encourages people to report "violations" to ED through an online complaint portal. If ED and the OCR intend to adhere to established education regulations, neither agency can simply revoke access to the federal student aid program without providing some form of due process. However, the type of process due to an institution depends on its level of certification and the alleged violation.

Under the federal regulations at [34 CFR Part 668 Subpart G](#), ED can initiate a "limitation, suspension or termination"

action against an institution by issuing a notice and providing an opportunity to request a hearing or submit written materials explaining “why the limitation or termination should not take place.” ED could also take an immediate action to remove Title IV funding access, which an institution can only appeal after the action has been taken. But an action under Subpart G is not the only lever available to ED. Schools could be subject to other ED actions, such as Heightened Cash Monitoring or invasive investigations that may create intense pressure on the institution's operations.

Given the DCL's explicit reliance on Title VI of the Civil Rights Act – compliance with which is an explicit condition of the Program Participation Agreement that governs federal student aid programs – and the administration's stance that the harmful nature of DEI programs violates Title VI, ED is issuing a dire warning that it will take action against institutions found to be out of compliance.

Next steps – What should institutions do now?

ED's expansive interpretation of federal law has significant implications for universities, K-12 schools and other organizations receiving federal funding, such as contractors and subcontractors involved in federal projects. Although ED plans to provide additional legal guidance in the future, the DCL highlights multiple race-related institutional policies and programs that could trigger a federal investigation and put institutions at risk of losing federal funding. Here are key areas schools should review.

Reevaluate recruiting programs and admissions practices: Recruiting programs and admissions practices that set preferences based on identity or limit certain individuals from applying could be viewed as discriminatory. The DCL specifically targets college application essays that could be used as proxies for race, as well as the use of third-party contractors, clearinghouses or aggregators. Schools should review recruiting and admissions practices to ensure they do not limit applicants based on their race, either directly or indirectly.

Assess aspirational hiring policies and promotional goals: Aspirational hiring policies or promotional goals should be carefully crafted to avoid perceptions of preferential treatment for any particular group. Some institutions, like the [University of Michigan](#), have already announced that they will no longer require diversity statements as part of faculty hiring, promotion and tenure decisions.

Review student scholarships and activities for inclusivity: Affinity groups and scholarship programs that restrict participation based on race could also be deemed discriminatory. Schools should thoroughly assess their existing DEI practices that offer advantages to specific groups based solely on protected characteristics and adjust accordingly.

Revisit publicly available information: The messaging on DEI initiatives on institutional websites should be mindful of the new federal directives when reflecting a DEI commitment. While many programmatic or institutional accreditors require diversity-related policies, there may be conflicts with the DCL. Institutions are encouraged to consult with their accrediting bodies to navigate these potential discrepancies given ED's new interpretation of federal law.

Understand local and state laws: Institutions must ensure their DEI initiatives comply with both state and federal law. Some states have DEI policies that may differ from federal guidelines, while others may closely align with the new federal interpretation. A comprehensive review of local, state and federal regulations will help ensure DEI programs are defensible across various legal jurisdictions.

Consult legal counsel regarding potential risks: Seek legal advice to understand the potential risks to federal funding in light of the DCL. Cooley's litigation and regulatory teams are assessing the [enforcement risks](#) associated with DEI and can help navigate any required adjustments to policies and practices.

Despite political shifts from the new administration, many educational institutions continue to recognize the value of fostering a diverse, inclusive and equitable environment. While the new DCL emphasizes the need to eliminate discriminatory practices, the ultimate goal of DEI programs should remain dedicated to ensuring all individuals have equal opportunities to succeed, regardless of their background. By focusing on fairness, transparency and equal access, educational institutions can implement DEI policies that both comply with federal law and uphold their commitment to an inclusive educational environment.

As the landscape of DEI continues to develop, we will continue to monitor both local initiatives and federal changes in this area and provide regular updates. And as always, if you have any questions related to federal or state-level compliance or need assistance reviewing your DEI programs, please feel free to contact us.

For insight on the attorney general's memorandum titled, “Ending Illegal DEI and DEIA Discrimination and Preferences,”

please visit [Cooley's Investigations and Enforcement Watch blog](#).

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