



NACUA Briefing Materials¹

Executive Branch Updates: The Legal Status of DEI in Higher Education

February 26, 2026

Executive Action

February 14, 2025: [Dear Colleague Letter on Title VI Enforcement](#)

January 21, 2025: [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)

January 20, 2025: [Ending Radical and Wasteful Government DEI Programs and Preferencing](#)

Federal Guidance

July 29, 2025: [Office of the Attorney General Memorandum on Guidance For Recipients of Federal Funding Regarding Unlawful Discrimination](#)

April 3, 2025: [Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification under Title VI and SFFA v. Harvard](#)

March 1, 2025: [Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act](#)

February 5, 2025: [Office of the Attorney General Memorandum on Ending Illegal DEI and DEIA Discrimination and Preferences](#)

Litigation on the Executive Orders & Cancellation of Grants

- [National Association of Diversity Officers in Higher Education, et al., v. Donald J. Trump, et al., \(4th Cir.\)](#)
 - **February 6, 2026:** Opinion Vacating the Preliminary Injunction and Remanding for Further Consideration. Plaintiffs, the National Association of Diversity Officers in Higher Education, the American Association of University Professors, and others, challenged the Trump Administration's Executive Orders on DEI claiming, inter alia, the executive orders' certification and termination provisions were overbroad, vague, and chilled protected speech in violation of the First and Fifth

¹ This document was compiled by NACUA's Law Fellow, Rachel Jenkin.

Amendment. In February 2025, a district court in Maryland issued a nationwide preliminary injunction, finding plaintiffs were likely to succeed in showing that (1) the certification and termination provisions violated the First and Fifth Amendment, (2) the plaintiffs and similar non-parties were likely to suffer irreparable harm as a result of the EOs; and (3) the balance of equities and the public interest favored issuing a preliminary injunction. On appeal, the Fourth Circuit disagreed and vacated the injunction, finding plaintiffs' facial challenge to the executive orders' termination and certification provisions was unlikely to succeed. With respect to the termination provision, the court concluded it was "nothing more than 'an outward-facing' policy directive from the President to his agents," noting that nothing in provision's "plain text" terminated any contracts or directly regulated any non-governmental conduct. Finding the plaintiff's reliance on enforcement evidence "blur[red] the line" between a facial and as-applied challenge, the court clarified that if grants were terminated "without regard to their legality, then plaintiffs can sue *those* actors for terminating *those* contracts." Turning to the certification provision, the court found that the plain language of the provision "requires only that plaintiffs certify compliance with federal antidiscrimination laws, which the First Amendment doesn't confer a right to violate." While noting it was "bound by the text" in rejecting plaintiffs' facial challenge to the provision, the court clarified, once again, that if the president or his subordinates misinterpreted federal antidiscrimination law, plaintiffs were free to "challenge that interpretation in a specific enforcement action."

- **Procedural History:**
 - **March 14, 2025:** [Defendant's motion for stay of the preliminary injunction issued by the U.S. Court of Appeals for the Fourth Circuit](#)
 - **March 4, 2025:** [Defendant's motion for stay pending appeal filed in the U.S. Court of Appeals for the Fourth Circuit](#)
 - **March 3, 2025:** [Defendant's motion to stay injunction pending appeal denied by the U.S. District Court for the District of Maryland](#)
 - **February 21, 2025:** [Preliminary injunction issued by the U.S. District Court for the District of Maryland blocking the "Termination Provision" of the Ending Radical and Wasteful Government DEI Programs and Preferencing Executive Order and the "Certification Provision" and "Enforcement Threat Provision" of the Ending Illegal Discrimination and Restoring Merit-Based Opportunity Executive Order](#) (Associated [Memorandum Opinion](#))
 - **February 3, 2025:** [Complaint filed in the U.S. District Court for the District of Maryland Baltimore Division](#)
- **Thakur v. Trump (9th Cir.)**
 - **December 23, 2025:** Order Granting in Part Defendants' Motion for Partial Stay. The plaintiffs, a group of researchers and faculty members at the University of California, sued the federal government challenging the termination of grants by several agencies. After the district court granted a preliminary injunction, the government appealed and requested a stay but only with respect to the grant terminations made by two agencies: the Environmental Protection Agency (EPA) and the National Endowment for the Humanities (NEH). The 9th Circuit held that the government was likely to succeed in showing that the district court lacked jurisdiction over plaintiffs' APA claims for the grants terminated by form letter,

because those claims were effectively contract claims. However, the court denied a stay as to the grants terminated due to DEI objections, concluding the government failed to show a likelihood of success on the merits where the record indicated grants were terminated based on viewpoint, in violation of the First Amendment. The court emphasized that while the government had discretion in funding decisions, it could not penalize existing grants to suppress disfavored viewpoints.

- **Procedural History:**
 - **June 23, 2025:** [Preliminary injunction granted](#), finding that plaintiffs were likely to succeed on their claims, noting that the termination of grants based on blacklisted DEI words amounted to unconstitutional viewpoint discrimination. The court further held that defendants may not terminate grants that serve the purpose for which Congress appropriated the funds. Lastly, the court rejected defendants' attempts to require plaintiffs to bring their claims in the Court of Federal Claims and clarified that the plaintiffs had standing to challenge the terminations, despite the grants having been awarded to the university rather than to the individual researchers.
 - **September 22, 2025:** [Preliminary injunction granted](#) as to additional agency defendants.
- **City of Seattle v. Trump (W.D. Wash.)**
 - **October 31, 2025:** [Order granting Plaintiff's motion for preliminary injunction issued in U.S. District Court Western District of Washington at Seattle](#)
 - Preliminary injunction granted, finding it likely that the administration exceeded its statutory authority and acted arbitrarily and capriciously by conditioning federal grant funding on compliance with the anti-DEI executive orders (and gender executive order). Rejected the government's argument that the conditions merely required adherence to existing antidiscrimination law.
 - **July 31, 2025:** [Complaint](#)
- **Council for Opportunity in Education v. Department of Education, et al., (D.D.C.)**
 - **January 16, 2026:** Preliminary injunction granted, finding that the Department of Education likely violated the Administrative Procedure Act by arbitrarily and capriciously cancelling and denying DEI-related grants without adequate explanation or required procedures.

Litigation on the February 14th Dear Colleague Letter
(current status: the DCL has been vacated as unlawful)

- **National Education Association et al., v. U.S. Department of Education et al., (D.N.H.)**
 - **February 18, 2026:** Joint Motion to Dismiss the Complaint without Prejudice accepted by a federal district court judge in New Hampshire.
 - **Procedural History:**
 - **February 3, 2026:** [Joint Motion to Dismiss The Complaint Without Prejudice](#)
 - **April 24, 2025:** [Preliminary injunction issued](#)
 - **March 5, 2025:** [Complaint](#)

- **American Federation of Teachers v. U.S. Department of Education (4th Cir.)**
 - **January 21, 2026:** Joint Stipulation to Dismiss Appeal
 - The Department of Education dropped its appeal. The August opinion stands.
 - **Procedural History:**
 - **October 15, 2025:** Notice of Appeal
 - **August 14, 2025:** Order holding unlawful and vacating the February 14th Dear Colleague Letter and accompanying certification requirement (Associated memorandum opinion)
 - **April 24, 2025:** Stay of Dear Colleague Letter (Associated memorandum opinion)
 - **February 25, 2025:** Complaint

 - **National Association for the Advancement of Colored People v. U.S. Department of Education, et al., (D.D.C.)**
 - **April 15, 2025:** Complaint challenging Feb. 14th DCL and accompanying certification requirement and FAQ alleging intentional discrimination, violation of due process, and violation of First Amendment rights. The complaint was later dropped after litigation developments with *American Federation of Teachers v. U.S. Department of Education*.
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