



Balancing Compliance and Inclusion: Title VI in a Shifting Legal Landscape

Lindsey Dunn, Senior Risk Management Counsel, UE

Amy Piccola, Partner, Saul Ewing LLP

Joshua Richards, Partner, Saul Ewing LLP

Agenda

- DEI on Campus
- Considering Race in Institutional Decision-Making
- Title VI and Antisemitism

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DEI on Campus


Certifications, fraud, and funding cuts

Executive Orders

- ***Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government***
“Federal funds shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology”
- ***Ending Radical And Wasteful Government DEI Programs And Preferencing***
Focus on “illegal and immoral discrimination programs, going by the name ‘diversity, equity, and inclusion’ (DEI)”
- ***Ending Illegal Discrimination And Restoring Merit-Based Opportunity***
“[I]nstitutions of higher education have adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called “diversity, equity, and inclusion” (DEI) or “diversity, equity, inclusion, and accessibility” (DEIA) that can violate the civil-rights laws of this Nation.”

Civil Rights Fraud Initiative

MEMORANDUM FOR OFFICE OF THE ASSOCIATE ATTORNEY GENERAL
CIVIL DIVISION
CIVIL RIGHTS DIVISION
CRIMINAL DIVISION
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
ALL UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL 

SUBJECT: Civil Rights Fraud Initiative

Under Attorney General Bondi's leadership, "[t]he Department of Justice is committed to enforcing federal civil rights laws and ensuring equal protection under the law." Attorney General Memorandum, *Ending Illegal DEI and DEIA Discrimination and Preferences* (Feb. 5, 2025). One of the most effective ways to accomplish this objective is through vigorous enforcement of the False Claims Act, 31 U.S.C. § 3729 et seq., against those who defraud the United States by taking its money while knowingly violating civil rights laws.

NIH Certification Policy

- “This Notice alerts the extramural research community of a new Civil Rights term and condition that **modifies the current terms and conditions** for all NIH grants, cooperative agreements, and other transaction (OT) awards.
- This term **applies prospectively to new, renewal, supplement, or continuation awards** issued on or after the date of this Notice.
- This new requirement supersedes Section 4.1.2 ‘Civil Rights Protections’ of the NIH Grants Policy Statement (GPS) as well as the negotiated terms of OT awards.”

NIH Certification Policy

Policy

Effective with the issuance of this Notice, the following term and condition applies:

Recipients must comply with all applicable Federal anti-discrimination laws material to the government's payment decisions for purposes of 31 U.S.C. § 3729(b)(4).

(1) Definitions. As used in this clause –

(a) DEI means “diversity, equity, and inclusion.”

(b) DEIA means “diversity, equity, inclusion, and accountability.”

(c) Discriminatory equity ideology has the meaning set forth in 45 CFR 101.11.1.

(d) Discriminatory prohibited boycott means a boycott of goods or services by an individual or organization specifically with Israeli companies or organizations organized under the laws of Israel to do business with the United States.

(e) Federal anti-discrimination laws means laws that prohibit discrimination on the basis of race, color, sex, religion, and national origin.

(2) Grant award certification.

(a) By accepting the grant award, recipients

(i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws; and

(ii) They do not engage in and will not during the term of this award engage in, a discriminatory prohibited boycott.

(3) NIH reserves the right to terminate financial assistance for any program in violation of Federal anti-discrimination laws.

(2) Grant award certification.

(a) By accepting the grant award, recipients are certifying that:

- (i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws; and
- (ii) They do not engage in and will not during the term of this award engage in, a discriminatory prohibited boycott.

NSF Priorities

- “The principles of merit, competition, equal opportunity, and excellence are the bedrock of the NSF mission. NSF continues to review all projects using Intellectual Merit and Broader Impacts criteria.
- NSF's broadening participation activities, including activities undertaken in fulfillment of the Broader Impacts criterion, and research on broadening participation, must aim to create opportunities for all Americans everywhere.
- These efforts should not preference some groups at the expense of others, or directly/indirectly exclude individuals or groups. Research projects with more narrow impact limited to subgroups of people based on protected class or characteristics do not effectuate NSF priorities.”

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Considering Race in Institutional Decision- Making

*An expansion of Students for Fair
Admissions?*

Feb. 14, 2025, DCL

“At its core, the test is simple: 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.

Federal law thus prohibits covered entities from using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life. Put simply, educational institutions may neither separate or segregate students based on race, nor distribute benefits or burdens based on race.”



Feb. 14, 2025, DCL

“The law is clear: treating students differently on the basis of race to achieve nebulous goals such as diversity, racial balancing, social justice, or equity is illegal under controlling Supreme Court precedent”

“DEI programs, for example, frequently preference certain racial groups and teach students that certain racial groups bear unique moral burdens that others do not. Such programs stigmatize students who belong to particular racial groups based on crude racial stereotypes. Consequently, they deny students the ability to participate fully in the life of a school.”



Feb. 14, 2025, DCL

“Relying on non-racial information as a proxy for race, and making decisions based on that information, violates the law.”

- “[A] school may not use students’ personal essays, writing samples, participation in extracurriculars, or other cues as a means of determining or predicting a student’s race and favoring or disfavoring such students.”
- “It would . . . be unlawful for an educational institution to eliminate standardized testing to achieve a desired racial balance or to increase racial diversity.”

Feb. 28, 2025, FAQs

- Requiring students to participate in privilege walks
- Segregating students by race for presentations and discussions with guest speakers
- Pressuring students to participate in protests or take certain positions on racially charged issues
- Investigating or sanctioning students for dissenting on racially charged issues through DEI or similar university offices
- Mandating courses, orientation programs, or trainings that are designed to emphasize and focus on racial stereotypes
- Assigning students coursework that requires them to identify by race and then complete tasks differentiated by race

= Forms of school-on-student harassment that could create a hostile environment under Title VI.

February 14, 2025 DCL

February 28, 2025 FAQs

ENFORCEMENT ENJOINED

Investigations

- DOJ Admissions “Compliance Reviews”
 - “For decades, elite colleges and universities have prioritized racial quotas over equality of opportunity, dividing Americans and discriminating against entire groups of applicants, all in the name of DEI. The prior administration advanced the ideology behind this illegal practice and did nothing to protect the civil rights of American students.”
- OCR Investigations (The PhD Project)
 - 52 schools in 41 states
 - Alleged use of “racial preferences and stereotypes in education programs and activities.”

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Title VI and Antisemitism

*Investigations, enforcement action, and
loss of funding*

Executive Order 13899 (12/11/19)

- “Anti-Semitic incidents have increased since 2013, and students, in particular, continue to face anti-Semitic harassment in schools and on university and college campuses.”
- “While Title VI does not cover discrimination based on religion, individuals who face discrimination on the basis of race, color, or national origin do not lose protection under Title VI for also being a member of a group that shares common religious practices. **Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual’s race, color, or national origin.**”

Executive Order 14188 (1/29/25)

“This order **reaffirms** Executive Order 13899 and **directs additional measures** to advance the policy thereof in the wake of the Hamas terrorist attacks of October 7, 2023, against the people of Israel. These attacks unleashed an unprecedented wave of vile anti-Semitic discrimination, vandalism, and violence against our citizens, especially in our schools and on our campuses. Jewish students have faced an unrelenting barrage of discrimination; denial of access to campus common areas and facilities, including libraries and classrooms; and intimidation, harassment, and physical threats and assault.”

Executive Order 14188 (cont'd)

“It shall be the policy of the United States to combat antisemitism vigorously, using all available and appropriate legal tools, **to prosecute, remove, or otherwise hold to account** the perpetrators of unlawful antisemitic harassment and violence.”

- The Attorney General is encouraged to employ appropriate civil-rights enforcement authorities, such as 18 U.S.C. 241, to combat antisemitism
- ED to submit a report identifying civil and criminal authorities/actions that can combat antisemitism; analyze administrative complaints against/involving IHEs alleging campus antisemitism.
- The Secretaries of State, Education, and Homeland Security to make recommendations for familiarizing IHEs with the grounds for inadmissibility under 8 U.S.C. 1182(a)(3) so that such institutions may monitor for and report activities by alien students and staff relevant to those grounds and for ensuring that such reports about aliens lead, as appropriate and consistent with applicable law, to investigations and, if warranted, actions to remove such aliens.

Enforcement Activity

- Internal directive: promptly address alleged antisemitic discrimination
 - *“For the relatively few complaints actually resolved, the prior Administration’s Assistant Secretary signed off on toothless resolution agreements that provided little to no remedy for Jewish students to this day. The Trump Administration will not permit antisemitic protesters and antagonists to take over campus facilities and terrorize Jewish students and staff with impunity.”*
- Letter to all IHEs under investigation for Title VI violations relating to “antisemitic harassment and discrimination”
 - *“Americans watched in shock as mobs of campus malcontents erected encampments, occupied buildings, and spit on, threatened, assaulted, and blocked Jewish students from going to class or traveling about campus freely. . . . OCR will no longer tolerate these unlawful practices.”*

Enforcement Activity

- Five directed investigations “buil[t] upon the foundational work of the House Committee on Education and the Workforce under then-Chairwoman Virginia Foxx”
- May 2025 Education and Workforce hearing.
- The Federal Task Force to Combat Anti-Semitism, a coordinated effort of DOJ, HHS, and OCR, announced that it will be visiting 10 university campuses that have experienced antisemitic incidents since October 2023.
- DOJ, HHS, ED, and GSA announce termination of \$400 Million in grants to Columbia University “due to the school’s [alleged] continued inaction in the face of persistent harassment of Jewish students.”



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