

WISE COURAGE

A Framework for Higher Education Leadership in the Face of Federal Overreach

EXECUTIVE SUMMARY

There is nothing “normal” about now. The Trump Administration has initiated a period of federal overreach against efforts by institutions of higher education (IHEs) to advance core values related to building inclusive and accessible environments, advancing equitable opportunity, and promoting the benefits of diversity. The Administration began by branding these efforts as “illegal DEIA” and is now taking multiple actions to bar pursuit of these values as if virtually all were outlawed when they are not. The Administration’s enforcement actions threaten academic freedom, a bedrock principle enshrined in the First Amendment that undergirds higher education’s ability to fulfill its purpose in our democracy, economy, and society.

Navigating this period presents an unprecedented challenge to IHEs and their leaders. It requires *wisdom* to separate the (legal) signal from the (policy preference) noise. And it requires *courage* to remain committed to an institution’s mission and values amid the risks associated with such federal overreach.

To help leaders take action, *Wise Courage* ([click here](#)) summarizes existing **legal parameters** and provides a **framework** for advancing effective, legally defensible access and opportunities for all students and faculty.

Legal Parameters: Anti-DEI Policy Views are not Federal Law

Despite the Trump Administration’s statements and enforcement actions, it lacks authority to eliminate the many lawful avenues available to IHEs to advance their missions. To navigate the current chaotic and confusing terrain, IHE leaders and policymakers should keep in mind the following seven legal parameters:

1. **“DEIA” is not inherently unlawful.** There is a broad array of educationally and legally sound actions IHEs may take to advance mission-based interests in promoting inclusion, equity, diversity, and accessibility.
2. **A diversity-dependent mission is “worthy,” not outlawed.** The Supreme Court in its recent *Harvard v. SFFA* decision did *not* outlaw a diversity-dependent mission. It called diversity “worthy” and affirmed prior rulings that IHEs deserve deference to “define their missions as they see fit” within constitutional boundaries.
3. **Considering lived experience or subject matter based on race is still permissible in higher education.** There are still multiple ways that race-related experiences and content can shape decisions and offerings in the higher education context. Examples include valuing in admissions what students have gained from their lived experiences, which may include experiences related to race, and courses, programming, themed groups, and research that focus on race without limiting participation based on any person’s racial status.
4. **Institutions of higher education can remove barriers and consider neutral criteria.** The Court in *SFFA* left untouched—and thus available to IHEs—many barrier-removing and neutral means of advancing inclusion, equity, and diversity as part of an IHE’s educational mission.
5. **But diversity interests are legally insufficient to justify conferring or withholding benefits for students on the basis of their racial status.** That is because the *SFFA* Court, applying equal protection principles of “strict scrutiny,” ruled that educational diversity *interests*, as long defined, are no longer *legally* “compelling.”
6. **Civil rights enforcement must not violate other aspects of federal law.** The appropriate goal for the federal government when enforcing nondiscrimination laws is to prevent or remedy discrimination. It is not to use that enforcement authority as means to promote unrelated policy goals, particularly if violating legal rights.
7. **Civil rights enforcement must follow established procedures.** Federal nondiscrimination statutes like Title VI require both specific facts to support credible compliance questions and due process to resolve them. Loss of federal funding is limited by law to the specific program “or part thereof” where a violation is found.

This executive summary provides high-level guidance, not specific legal advice, for which IHEs should consult their leaders and lawyers.

Framework: A Three-Part Framework for Wise Courage

With these basic parameters of federal non-discrimination law in mind, the following three-part framework is designed to help promote wise and courageous leadership in higher education.

PART I: Ground Risk Assessment in Mission, Law, and Context

Risk assessment is a comprehensive exercise, where legal risk is but one component. Good practice begins with consideration of an IHE's mission and the significance of a particular policy or program to the IHE's ability to preserve its foundational principles and achieve its educational goals. IHEs must of course satisfy clear law.

PART II: Communicate Proactively to Increase Understanding

IHEs must communicate with clarity about *what* they are doing (and not doing) to further their missions. This must also include explaining *why* and *how*. Effective, proactive communications must be understandable to a variety of audiences and cover both what an IHE is doing on its own as well as in concert with others.

PART III: Take Strongly Defensible, Mission-Advancing Actions

IHEs should continue to take legally defensible actions to advance their mission, including with respect to inclusion, equity, diversity, and accessibility. By following the legal parameters above and recognizing where federal actions are or may be at odds with federal law, IHEs can move forward even in this fast-changing time.

This part of the framework offers three kinds of inclusion-, equity-, and diversity-advancing actions to consider:

→ **There are actions that are fully inclusive because they authentically benefit everyone, including by increasing accessibility and effectiveness for all talent.** These might include effective pedagogical approaches, quality mentoring programs, transparency about pathways and enrichment opportunities, flexible academic and career trajectories, and aligning timing and terms of offers with financial support so that candidates have full information about affordability before deciding. When these policies are made available to anyone who may benefit, regardless of their racial status, they should not implicate legal limitations.

There are additional inclusive actions that may be *viewed* as more explicitly tied to inclusion, equity, and diversity aims. IHEs should prepare to defend these types of actions if wrongfully enforced against, including:

- (i) Selection Criteria that are Authentic, Mission-Related & Experience-Based and/or Race-Neutral
- (ii) Programs or Practices that Focus on Race and Related Issues as Subject Matters
- (iii) Fair Access and Effective Outreach and Communication for Everyone
- (iv) Data-Informed Decision-Making

→ **If an IHE needs to pause an existing action or program, it should do so in a thoughtful way.** Pausing may be needed to assess the meaning, impact, and limits of changes to the legal landscape. But leading with wise courage means both avoiding preemptive compliance with policies that are at odds with law and resisting the tendency to over-rotate when some changes are necessary.

→ **IHEs need to act individually and collectively to defend higher education's most fundamental mission priorities.** It can be difficult for an isolated IHE to fight back under the threat of losing millions or billions of dollars of federal funding and tax-exempt status. But IHEs must find a way to push back if and when federal overreach threatens a particular institution's priority mission interests or the national higher education endeavor's bedrock foundations, such as academic freedom and inclusion of all talent. Examples are included.

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The decisions facing leaders of higher education today are among the most vexing and consequential in recent history. **This is a time for leaders to embrace wise courage to meet a new reality.**

Click to review the full [Wise Courage](#) framework.