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EducationCounsel Alert for April 25, 2025

This EducationCounsel Alert includes updates on several significant federal education policy developments in the last several days, including seven new Executive Orders (EOs) issued on April 23, and three significant court decisions delivered on April 24. Three of the EOs and the court decisions involve aspects of the Administration's multi-pronged endeavor to eliminate efforts that advance diversity, equity, and inclusion in education and to reverse the traditional focus of federal civil rights enforcement.

The EOs and developments in this Alert include:

1. Courts Halt Enforcement of the Title VI Dear Colleague Letter and "DEI" Certifications
2. Disparate Impact EO
3. School Discipline EO
4. Higher Education Accreditation EO
5. Foreign Influence in Higher Education EO
6. HBCUs Initiative EO
7. Artificial Intelligence in Education EO
8. Workforce Development EO
9. Additional Updates

You can also find summaries and brief analysis of many other developments in our ongoing Executive Actions Chart, which will be updated soon to include all of the items covered in this Alert. All of our summaries and analysis of the Administration's executive actions are available in one place by clicking here. Please note that these developments are sometimes changing rapidly, and *this Alert and all our materials are meant to provide general guidance and do not constitute specific legal advice*.

1. Courts Halt Enforcement of the Title VI Dear Colleague Letter and "DEI" Certifications

As described in our last Alert, April 24 was the deadline established by the U.S. Department of Education (USED) for state and local education agencies (SEAs and LEAs) to submit a new certification, affirming that they are not violating Title VI of the Civil Rights Act of 1964 through "illegal DEI practices." Just hours before the deadline, three federal courts issued rulings that, collectively, block USED from acting on those certifications and/or taking Title VI enforcement actions based on the underlying guidance issued and cited by the Trump Administration against diversity, equity, and inclusion efforts in K-12 and higher education. The enjoined resources include the February 14 Dear Colleague Letter, the FAQs that followed it, USED's "End DEI" portal, and the Title VI/"illegal DEI" certification.

Some key points to keep in mind:

- USED can still enforce Title VI consistent with long-standing interpretations of that law. It just cannot do so in ways that are based on or rely upon the Administration's new guidance or the certification.
- Each of the three rulings remain in place while each lawsuit proceeds to final resolution. Two are "preliminary injunctions" and one is a "stay." As the lawsuits progress, the courts might take a number of final actions, including issuing a *permanent* injunction or ruling that the Administration can rely on the guidance again.

- The Administration can immediately appeal the courts' decisions to issue the injunctions and the stay. Appeals are expected and can even reach the Supreme Court before the underlying cases move forward. Sometimes preliminary injunctions and stays remain in place during these appeals and sometimes they are paused, which in this case would allow USED to take action again.
- Although the plaintiffs make similar arguments about why the Administration's actions are unlawful, there are also some differences among the lawsuits. Similarly, the three judges made some similar and some different decisions about the reasons for their rulings and the scope of their orders. These differences may become more relevant during the appeals and/or as the underlying cases proceed, but for now, the combination of the three orders effectively applies to block all of USED's efforts related to the DCL and certification across the nation.

The three lawsuits, with links to the original complaints and to the courts' injunctions, are:

- National Education Association (NEA) lawsuit in New Hampshire (injunction opinion),
- American Federation of Teachers (AFT) lawsuit in Maryland (stay opinion), and
- NAACP lawsuit in Washington, DC (injunction opinion).

The NEA injunction applies to any entity that employs or contracts with the plaintiffs or their members, while the judges in the AFT and NAACP suits issued nationwide rulings.

➔ ***What does this mean for education?*** For now, the Administration cannot reach beyond existing law to allege that all or undefined diversity, equity, and inclusion efforts amount to illegal discrimination. Education leaders and their partners should continue to comply with federal law, including how federal courts have interpreted it. These rulings also should serve as a reminder to avoid preemptive compliance with the Administration's policy preferences if those conflict with the law—or if those policy preferences are lawful but non-binding (such as agency guidance) and run counter to an institution's mission and values.

2. Disparate Impact EO

"Restoring Equality of Opportunity and Meritocracy" seeks to eliminate use by the federal government (and maybe even by states) of the "disparate impact" standard, which is a long-standing, well-established standard for identifying policies or practices that have an unlawful discriminatory effect under federal civil rights laws, including Title VI and Title IX (where it is established in agency regulations or other actions) and the employment antidiscrimination law Title VII (where it is established in statute and cannot be eliminated merely by agency action). Disparate impact identifies for review (and possible remediation) policies or practices that seem fair on the surface but end up hurting certain groups more than others. To count as unlawful discrimination, though, there has to be more than just a statistical gap. There must also be either no valid, non-discriminatory reason for the policy *or* an equally effective alternative that would cause less harm. instead.

The EO starts by mischaracterizing the standard, implying that proof of disparity alone is unlawful and claiming that the standard imposes a "near insurmountable presumption of unlawful discrimination exists where there are any differences in outcomes." This, the EO concludes, "violates our Constitution . . . by mandating, rather than proscribing, discrimination."

The EO calls for a number of federal actions to implement President Trump's new policy prohibiting the use of disparate impact, including:

- Repealing and amending relevant regulations and guidance—including several Title VI regulations often used in education settings. Within 30 days, the Department of Justice (DOJ) must work with other agencies to report on progress toward repealing all relevant regulations and guidance.
- Directing all agencies to take "appropriate action" on *existing* consent judgments and permanent injunctions that were based on the disparate impact standard, change the government's stance in any *pending* matters relying on it, and deprioritize *new* enforcement under any disparate impact laws or regulations.
- Identifying other laws or decisions—including at the *state* level—that are about disparate impact and reporting back to the President about "any appropriate measures to address any constitutional or other legal infirmities." This part, along with a later provision of the EO regarding "Future Agency Action," calls on DOJ to explore pathways to imposing throughout the nation (not just the federal government) the President's view that the disparate impact standard itself is discriminatory.
- Calling on DOJ and the Equal Employment Opportunity Commission (EEOC) to develop joint guidance or technical assistance to help employers understand expectations with regard to nondiscrimination in employment and to "promote equal access to employment regardless of whether an applicant has a college education."

➔ ***What does this mean for education?*** This EO seeks to implement a major change in how we conceive of civil rights protections and how we identify and remedy discrimination in society, including in schools. The disparate impact standard at its core entails the use of disaggregated data to identify and explore potential problems and, where appropriate, to remedy them. In the absence of disparate impact, only claims of *intentional* discrimination will be investigated or prosecuted by the federal government, and such cases are often very hard to prove. Further, by refusing to examine *why* disparities exist in outcomes or opportunities among groups of students or educators, the Administration is effectively locking into place existing disparities including where it is tied to past or present discrimination. Finally, the EO's direction to revisit all *existing* agreements and settlements could create significant change (and uncertainty) in the affected school communities.

EducationCounsel will produce a deeper-dive analysis on this EO and its profound implications soon.

3. School Discipline EO

"Reinstating Common Sense School Discipline Policies" builds on the disparate impact EO discussed above. Pointing to guidance and resources issued by the Obama and Biden Administrations—and how they were implemented—the EO claims schools were "required . . . to discriminate on the basis of race by imposing discipline based on racial characteristics, rather than on objective behavior alone." In other words, the EO takes the view that efforts to reduce disparate impact in school discipline are actually a form of discrimination that violates federal law

The EO requires multiple agency actions to effectively prevent consideration of whether and how school discipline policies may have a significant disparate impact by race and other characteristics:

- The EO directs USED and DOJ to issue new school discipline guidance within 30 days, emphasizing race-neutral, behavior-based disciplinary practices. Within 60 days, USED and DOJ are required to work with governors and state attorneys general on the prevention of racial discrimination in the application of school discipline. Within 90 days, the Department of Defense (DOD) must revise their school discipline code for the schools it operates.

- Moving forward, USED must "take appropriate action" with districts and states that "fail to comply with Title VI protections against racial discrimination in the application of school discipline" as outlined in this EO.
- Additionally, USED, DOJ, and the Departments of Health & Human Services (HHS) and Homeland Security (DHS) must prepare a report within 120 days detailing an inventory and analysis of Title VI discipline-related investigations since 2009; the role of federally funded nonprofits in promoting equity-based discipline; alternatives to equity-based discipline approaches; and model policies rooted in "American values and traditional virtues."

➔ ***What does this mean for education?*** Like all EOs, this one cannot change what is or is not lawful. Accordingly, existing discipline policies and practices that comply with Title VI are still legal. That said, how the Administration implements this EO may prompt challenges to and changes in school disciplinary policies nationwide, including the wider use of discipline policies such as out-of-school suspensions and expulsions. Further, the directive to review federal funding could result in efforts to defund programs or organizations that promote equity-based disciplinary approaches.

4. Higher Education Accreditation EO

"Reforming Accreditation to Strengthen Higher Education," seeks to make several significant changes to the higher education accreditation system, which ensures colleges and universities meet quality standards to qualify for federal aid. The EO criticizes existing accreditors for "routinely approv[ing] institutions that are low-quality by the most important measures" and incorporating DEI-based standards, which the Administration characterizes as "unlawfully discriminatory practices." The EO directs USED to take several actions, including "holding accountable"— via "denial, monitoring, suspension, or termination of accreditation recognition"—accreditors that force institutions to "engage in unlawful discrimination . . . under the guise of [DEI]." The EO specifically directs DOJ and USED to investigate the two specific accreditors—the one for law schools and the one for medical schools that confer MDs—because of objections to their approaches to "DEI."

The EO also directs USED to resume the recognition of new accreditors. Note that changes to the accreditation regulations made during the previous Trump Administration already made it easier for USED to recognize new accreditors. The EO calls for USED to "mandate" that accreditors require their institutions to use program-level student outcomes data to improve but "without reference to race, ethnicity, or sex." Although USED may have the authority to compel accreditors to use student outcomes data to judge the quality of institutions they oversee, section 496(g) of the Higher Education Act (HEA) prohibits USED from mandating specific metrics or thresholds that accreditors must use in their approval processes and decisions. This may prevent USED from prohibiting disaggregation of such outcomes on the basis of race, ethnicity, or sex as called for in the EO.

Finally, the EO does not direct the Secretary to promulgate new accreditation regulations, but it does direct USED to "take appropriate steps" to ensure a new set of "student-oriented accreditation" principles govern the process moving forward. These include that institutions, among other things, "provide high-quality, high-value academic programs free from unlawful discrimination," reduce barriers to innovative education models, prioritize intellectual diversity, and prohibit degree inflation. USED is also ordered to launch an experimental site (essentially a pilot program for which regulatory requirements can be waived) to ease approvals of new and innovative "quality assurance pathways" within the accreditation system.

- ➔ ***What does this mean for education?*** USED is likely to use its recognition authority to push accreditors to voluntarily change standards, particularly regarding what might constitute "unlawful DEI," but the HEA limits the Department's authority to unilaterally impose broad requirements on accreditors, potentially including the EO's attempted prohibition on using disaggregated outcome data. The EO also reflects the significant likelihood that the Administration will move as quickly as possible to recognize new accreditors, which would potentially allow significant numbers of new institutions and other higher education providers to become eligible to disburse Title IV aid. Although it is possible that USED may need to issue new regulations to take these actions, the Administration may attempt to move forward under the existing regulations to approve new accreditors.

5. Foreign Influence in Higher Education EO

"Transparency Regarding Foreign Influence at American Universities" establishes as a priority the enforcement of Section 117 of the HEA, which requires institutions of higher education (IHEs) to report significant sources of foreign funding. The EO directs USED to take several actions, including undoing any actions by the Biden Administration that limit transparency, requiring more specific details from IHEs about foreign funding, providing the public with more access to the disclosed information, and working with other agencies to conduct audits and investigations that may also lead to referrals to DOJ for enforcement. The EO also requires USED and other agencies to ensure that IHEs certify their compliance with HEA's foreign funding disclosure requirements as a "material condition" under the False Claims Act and/or for purposes of potentially rescinding federal funding from the IHE. (Last week, USED requested records from Harvard University related to this disclosure requirement, including the federal funding threat for noncompliance.)

- ➔ ***What does this mean for education?*** As the HEA already requires these disclosures by IHEs, the EO's primary significance is its demand for robust enforcement, including the threat of withholding federal funding and imposing False Claims Act monetary penalties for noncompliance.

6. HBCUs Initiative EO

"White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities" creates a White House Initiative on Historically Black Colleges and Universities (HBCUs) and outlines key responsibilities and priorities for the initiative, which are similar to those outlined by previous administrations and include fostering collaboration among federal agencies, partnering with the private sector and private philanthropy to improve HBCU capacity and funding, building pipelines with K-12 schools, and hosting an annual HBCU summit. This EO differs from past ones by locating the Initiative in the White House, explicitly calling on states to provide the required matching funds for 1890 land grant HBCUs, and referencing collaboration with the Department of Agriculture (USDA) and state governments to ensure these institutions receive "the maximum funding to which they may be entitled." Although it is unclear whether more EOs are forthcoming, the Trump administration in January rescinded all of the other existing minority-serving institution and racial equity initiatives, making this HBCU Initiative the sole remaining education White House Initiative of this kind at the current time.

- ➔ ***What does this mean for education?*** This EO affirms bipartisan support for HBCUs through a White House Initiative that has been in place in some form since the Carter Administration. The key goals of this initiative are similar to those of past White House Initiatives, with greater visibility in the

White House and an increased focus on encouraging enhanced funding particularly for HBCU land grant institutions.

7. Artificial Intelligence in Education EO

"Advancing Artificial Intelligence Education for American Youth" aims to "promote AI literacy and proficiency" and calls for "appropriate integration" of AI into education, "comprehensive AI training for educators," and "early exposure to AI concepts and technology to develop an AI-ready workforce." The EO establishes a White House Task Force on AI Education, chaired by the Director of the White House Office of Science and Technology Policy and including the Secretaries of Education and Labor and the Special Advisor for AI & Crypto, among other Administration officials. The Task Force and its agency members are charged with implementing the EO's aims as well as, among other things:

- Holding a "Presidential Artificial Intelligence Challenge" to spur student and educator innovation;
- Taking a number of steps to support K-12 AI education including forming public-private partnerships to provide and prioritizing federal grants for AI tools and resources for AI instruction, better connecting existing federal AI resources with states and districts, issuing guidance from USED on using federal education funds to improve outcomes using AI, and deploying existing USED research programs to assist AI efforts;
- Prioritizing the use of AI in education into teacher training via USED's discretionary grants, NSF's research grants and training programs, and several of the Department of Agriculture's programs; and
- Requiring the Department of Labor to prioritize Registered Apprenticeships in AI-related occupations, encourage states to use Workforce Innovation and Opportunity Act funding to develop AI skills and related work-based learning, and collaborate with USED and the National Science Foundation (NSF) to promote high-quality AI courses and certifications.

➔ ***What does this mean for education?*** The EO prioritizes AI literacy and "competency" as a foundational skill across subjects. Although it prioritizes efforts to support and train educators in adopting AI in the classroom as a priority to ensuring student AI literacy, it seems to rely on existing federal teacher training grants, despite potential efforts by the Administration to reduce or eliminate them.

8. Workforce Development EO

"Preparing Americans for High-Paying Skilled Trade Jobs of the Future" seeks to focus federal workforce funding on "reindustrialization needs" and preparing workers to fill the "growing demand for skilled trades and other occupations." The EO requires the Secretaries of Labor, Commerce, and Education to review all federal workforce programs and submit a report within 90 days that recommends how to modernize, integrate, and re-align programs to address critical workforce needs of emerging industries and companies and to prepare workers with in-demand skills. The report must also include, among other things, proposals to reform or eliminate ineffective programs, deploy AI to help with "upskilling of incumbent workers," identify "credentials and assessments" that can serve as alternatives to a college degree, and modernize measures and data collection. Those agencies must also submit a plan within 120 days to establish one million new active apprentices, including ways to expand Registered Apprenticeships to new sectors, bring this workforce model to scale, and better connect it to K-12 CTE programming. The EO also requires the three agencies to improve outcomes transparency including on the performance outcomes of workforce

development programs and credentials supported through federal investments, including earnings and employment data.

➔ ***What does this mean for education?*** There has been bipartisan support for workforce development programs. This EO's impact will become more clear after the development and implementation of the plans described above. The focus on industrial occupations, Registered Apprenticeships, and college alternatives all represent potentially significant changes to federally-funded workforce development.

9. Additional Updates

Many other updates appear in the Executive Actions Chart, but the following are worth highlighting here:

Student Loan Collections Resume: On April 21, the Office of Federal Student Aid (FSA) announced that it will resume collections of its defaulted federal student loan portfolio beginning on May 5. Defaulted borrowers have not been required to repay their loans since March 2020, when they were paused for the pandemic. FSA will send required notices later this summer beginning administrative wage garnishment for defaulted borrowers. The announcement includes additional information about the Administration's plans including options for borrowers to consider. This is the first time since the beginning of the pandemic that student loan borrowers will incur significant penalties for failure to repay, including negative credit reporting and loss of tax refunds, social security benefits, and wages.

NSF Updates Priorities and Begins Cancelling Existing Research Grants: On April 18, the National Science Foundation (NSF) announced updates to its priorities, which included among other things a shift away from "DEI"-related research and "projects with more narrow impact limited to subgroups of people based on protected class or characteristics." At the same time, the media reported cancellations of more than 400 grants. On April 24, NSF Director Sethuraman Panchanathan resigned more than a year before the end of the term for which President Trump nominated him in 2020.

NIH Places New Anti-DEIA and Anti-BDS Requirements on Research Grant Recipients: On April 21, the National Institutes of Health (NIH) released a new Notice of Civil Rights Term and Condition of Award that requires all domestic grant recipients to certify that they will not operate programs that "advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws" or participate in "a discriminatory prohibited boycott" for the duration of the grant, defined as "refusing to deal, cutting commercial relations, or otherwise limiting commercial relations" with the State of Israel or Israeli companies. Recipients found to violate these terms stand to lose NIH funding and may be required to return any grant funding received. It is not immediately clear from the announcement, which supersedes current nondiscrimination requirements for NIH recipients, whether the prohibitions are limited to the entities utilizing the grants or the institutions as a whole. The NIH administers more than $33 billion annually to 2,500+ universities, medical schools, and other research institutions across the country.

- Note: Although this certification requirement parallels the USED one, the three preliminary injunctions do not apply here because the lawsuits do not involve NIH.

Cuts to AmeriCorps: Multiple reports indicate that the Administration has initiated a major reduction in force and program cancellation at AmeriCorps. Over 55,000 Corps members serve in education-related service assignments.

Cuts to NAEP: On April 17, USED announced that the 2026 National Assessment of Educational Progress (NAEP) is on schedule for 4th and 8th grade reading and math assessments. But on April 21, the National Assessment Governing Board announced reductions to its assessment schedule for 2026 and beyond, eliminating various tests by grade and subject and reducing the availability of some district-level results.

University Presidents Join Together: On April 22, the American Association of Colleges and Universities published a letter calling for "constructive engagement" by the Administration with higher education institutions and pushing back on infringements of academic freedom. As of April 25, 480 college presidents had signed onto the letter.

Updates on Existing and New Litigation:

- **Harvard:** On April 9, Harvard professors (via AAUP) filed a lawsuit in a Massachusetts federal court in response to the task force's initial set of (Columbia-like) "pre-conditions." On April 21, Harvard itself filed a lawsuit in a Massachusetts federal court regarding the Administration's actions towards it, including an April 14 announcement that the government was freezing $2.2 billion in grants and $60 million in contracts. (Additional reporting suggests the Administration may freeze another $1 billion and is considering having the IRS revoke Harvard's tax-exempt status.)
- **Equity Assistance Centers:** On April 9, the Southern Education Foundation filed a lawsuit in DC challenging the cancellation of the Equity Assistance Center-South.
- **ESSER Late Liquidation:** On April 10, seventeen states filed a lawsuit in DC challenging USED's revocation of the late liquidation approvals for remaining ESSER funds.
- **Maine:** On April 11, a federal judge in Maine issued a temporary restraining order against USDA, holding it likely that it was unlawful to withhold Maine's USDA funding for an unrelated Title IX finding and in a manner that did not comply with procedural requirements.
- **IES:** On April 14, the American Educational Research Association (AERA) and the Society for Research on Educational Effectiveness (SREE) filed a lawsuit against USED over the significant RIFs and contract/grant terminations at the Institute of Education Sciences (IES).
- **Indirect Rate:** On April 14, a coalition of universities and higher education associations filed a lawsuit in a federal court in Massachusetts challenging the Department of Energy's new policy to limit indirect costs of grants to 15%, the same policy that the same federal court permanently enjoined NIH from implementing.
- **Anti-DEI Book Removals:** On April 15, twelve K-12 students attending Department of Defense Education Activity (DoDEA) schools filed a lawsuit challenging DoDEA's removal of certain books and curricular materials as part of the DOD's implementation of the "anti-DEI" EOs.
- **Data:** On April 24, the National Academy of Education and National Council on Measurement in Education filed a lawsuit in DC challenging USED's reductions and eliminations of federal educational data collections and capacity.

DISCLAIMER: Consistent with our mission, EducationCounsel is working to update and support the field as federal actions consequential to education are unfolding. The information provided above does not serve as legal counsel and, given the pace of action, could be outdated quickly. Nonetheless we hope this information is helpful. If you have any suggestions or feedback please send it to info@educationcounsel.com. Updates in this Alert are current as of April 25, 2025 at 10:00 am EST.