

EducationCounsel Alert for February 26, 2025

This EducationCounsel Alert includes, in one place, updates about several significant legal developments in response to various Trump Administration actions relevant to education, including:

1. **CHALLENGING OCR'S "DEAR COLLEAGUE" LETTER:** On 2/25/25, the American Federation of Teachers (AFT) and a coalition of educators and sociologists filed suit in Maryland federal court to challenge the 2/14/25 Office of Civil Rights (OCR) "Dear Colleague" letter threatening civil rights enforcement against education systems and schools for advancing diversity, equity, and inclusion.
2. **HALTING ANTI-"DEI" EXECUTIVE ORDERS:** In two federal courts, judges restrained parts of the Trump Administration's efforts to terminate federal education grants and contracts.
 - On 2/21/25, a federal court in Maryland issued a nationwide preliminary injunction halting implementation of several aspects of the Administration's anti-"DEI" Executive Orders (EOs).
 - On 2/13/25, a federal judge in Washington, DC, issued a temporary restraining order (TRO) preventing USAID from taking a blanket approach to terminating its foreign assistance grants or contracts.
3. **SHIELDING USED DATA FROM "DOGE":** On 2/24/25, a federal court in Maryland issued a TRO preventing the U.S. Department of Education (USED) and the Office of Personnel Management (OPM) from sharing with "DOGE" the plaintiffs' personal information, including the 1.8 million AFT members and federal student aid recipients.
4. **RESTRICTING IMMIGRATION ENFORCEMENT IN "SENSITIVE" SPACES:** On 2/24/25, a federal court in Maryland issued a preliminary injunction blocking the Department of Homeland Security from taking immigration enforcement actions within certain places of worship.

This Alert for February 26, 2025 focuses primarily on brief overviews of these actions. Given the second topic's relevance to recipients of federal education grants and contracts, we also provide some suggested actions to consider at the bottom of that update. Please note that these items are developing rapidly, and *nothing in this Alert constitutes specific legal advice.*

You can also find summaries and brief analysis of these and many other developments in our ongoing [Executive Actions Chart](#). Depending on the topic, we are also producing longer pieces such as [this](#) deep dive into the OCR "Dear Colleague" letter and [this](#) collection of federal laws prohibiting the federal government from interfering with state and local curricular decisions.

1. CHALLENGING OCR'S "DEAR COLLEAGUE" LETTER

On 2/25/25, a coalition including the American Federation of Teachers [filed](#) a lawsuit against USED to challenge the legality of the "[Dear Colleague Letter](#)" issued on 2/14/25 by USED's Office for Civil Rights (OCR). (The plaintiffs' press release is available [here](#).) Among several things, the OCR letter broadly characterized efforts to advance diversity, equity, and inclusion in education as unlawful racial discrimination. The OCR letter also threatened enforcement actions against these programs and policies, including the withholding of federal funds, under Title VI of the Civil Rights Act of 1964. (You can read EducationCounsel's analysis of the letter [here](#).)

The plaintiffs argue that the letter violated the First Amendment, the Fifth Amendment (due to its vagueness), and the Administrative Procedures Act. They also ask the court to prevent OCR from enforcing the letter through civil rights enforcement actions.

→ **What does this mean for education?** Educators should continue to comply with all civil rights laws and keep in mind that neither EOs nor a “Dear Colleague” letter can change what is legal under Title VI. As we recommended in our deeper analysis of the letter:

- Avoid over- or under-reacting.
- Be clear on educational (and relevant program) mission aims, with a strong and authentic embrace of inclusion—fair access and opportunity—for all.
- Assure that all policies and programs are up to date and aligned with the Supreme Court’s *SFFA* ruling and relevant state laws.
- Examine narratives associated with relevant policies and programs.

2. HALTING ANTI-“DEI” EXECUTIVE ORDERS

What Happened? Two federal district courts recently entered orders affecting the Trump Administration that should have significant implications regarding USED and “DOGE” efforts to terminate federal education grants and contracts. The first order prohibits at least temporarily terminations of grants and contracts for “DEI” reasons as reflected in the anti-“DEI” EOs. The second prohibits at least temporarily a blanket approach to terminating foreign aid contracts.

First, in *National Association of Diversity Officers in Higher Education, et al. v. Donald J. Trump, et al.*, the U.S. District Court for the District of Maryland [issued](#) a preliminary injunction on 2/21/25 that prohibits, among other things, federal agencies from basing the termination of any “equity-related grants or contracts” on either of President Trump’s anti-“DEI” Executive Orders (EOs): “[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)” and “[Ending Radical and Wasteful Government DEI Programs and Preferencing](#).” (Click [here](#) for more detailed background on these EOs; click [here](#) to access the court’s opinion explaining its decision.)

The court found it is *likely* that parts of the EOs will be found to be unconstitutional in one or both of two ways: content-based restrictions on free speech under the First Amendment and unduly vague and overbroad policies in violation of the Fifth Amendment’s due process protections. The court noted, for example:

According to a recent case, “approximately 20% of the nation’s labor force works for a federal contractor.” ... The [EO] leaves those contractors and their employees, plus any other recipients of federal grants, with no idea whether the administration will deem their contracts or grants, or work they are doing, or speech they are engaged in, to be “equity-related.” And the [EO] leaves the private sector at a loss for whether the administration will deem a particular policy, program, discussion, announcement, etc. to be among the “preferences, mandates, policies, programs, and activities” the administration now deems “illegal.”

The parts of the EOs that the court enjoined include the provisions for *terminating* grants and contracts, requiring *certifications* from funding recipients that they are not promoting “DEI”, and threatening civil *enforcement* action against those who are (including bringing any actions under the False Claims Act related to the certifications). Regarding the ban on further terminations because of these EOs, the judge specified the government can not “pause, freeze, impede, block, cancel, or terminate any awards, contracts or obligations...or change the terms of any [such awards, contracts or obligations].”

The injunction applies across the federal government—including USED—and will be in place as the case proceeds, unless the Trump Administration is successful in appealing the order. (It has already filed notice of appeal on 2/24/25.) Note that the court did *not* enjoin two other parts of the EOs. The Attorney General may still prepare a report, as required by one of the EOs, about various strategies the Administration might take to discourage “DEI” efforts in the private sector. Similarly, the court’s order does not stop the Administration from developing “[a] plan of specific steps or measures to deter DEI programs or principles . . . that constitute illegal discrimination or preferences.”

→ **What does this mean for education?** The form termination letters USED has sent to many grantees point to these same EO that the court said are likely unlawful. However, it is important to note that the court’s injunction does not clearly apply *retroactively* to the terminations that took place over the past two weeks. More likely, the current version of the injunction will apply *prospectively* to block any additional terminations the Administration may want to pursue (or terminations that have not yet been effectuated). That could of course change if the plaintiffs ask the court to expand the injunction to those terminations already made citing the EOs.

Also, because the court did not enjoin all parts of the EOs, we may still see *investigations* if not *enforcement actions* while this injunction is in place, including of “institutions of higher education with endowments over 1 billion dollars.”

Second, in *AIDS Vaccine Advocacy Coalition, et al. v. United States Department of State, et al. & Global Health Council, et al. v. Donald J. Trump et al.*, the U.S. District Court for the District of Columbia [issued](#) a temporary restraining order (TRO) on 2/13/25 that holds that federal foreign assistance grants or contracts may not have their funding or performance suspended or terminated on a blanket basis. The court found a likely violation of the Administrative Procedure Act (APA) given that the actions were taken by USAID without showing that each grant, contract, or program being suspended or terminated has been reviewed and provided a rational basis for the action.

Note that on 2/20/25 the court [clarified](#) that the TRO does not preclude the government from “undertaking a good-faith, individualized assessment of a contract or grant and, where the terms or authority under law allows, taking action with respect to that particular agreement consistent with any procedures required (including, for example, notice to contracting parties).”

→ **What does this mean for education?** Although the TRO is directed at foreign assistance programs, the court’s rationale for enjoining blanket suspensions and terminations as likely violating the APA would appear to be relevant to other lawsuits that might challenge similar suspensions and terminations in other contexts, as the APA broadly applies to executive agency actions. For example, USED appears to have taken a blanket approach to terminating 89 IES research and data contracts.

What’s Next? This pair of court decisions are being challenged by the Administration and may well be subject to changes as these cases proceed. In the meantime, it is important that grantees and contractors consider several possible actions:

1. If you receive a new termination notice citing the Administration’s anti-“DEI” orders, you should contact your grant/contracting officer to confirm in writing that they will comply with the court’s injunction, that your grant or contract remains in effect, and that program funding shall continue to be available for invoicing, until further action and notice by the court.
2. If you have received a termination notice that you believe is improper, you should not sign any modifications (to include any amendments or releases) agreeing to terminate or otherwise close out

your grant or contract prior to determining implications of the preliminary injunction and proper objections and actions to preserve your rights.

3. If you have already executed a close out for your grant or contract due to a termination that has now been enjoined, you should evaluate your grounds for challenging the termination as ultra vires, or void, and pursue any available legal remedies, including in any potential appeal.

Please note that there are likely other legal grounds under which recent federal education grant and contract terminations can and may be challenged, but the recent preliminary injunction and TRO described above provide important information for organizations and individuals affected by the terminations to keep in mind as they consider next steps. In any case, affected entities should consult with legal counsel.

3. SHIELDING USED DATA FROM “DOGE”

In *American Federation of Teachers, et al. v. Scott Bessent, et al.*, the U.S. District Court for the District of Maryland [issued](#) a temporary restraining order (TRO) on 2/24/25 blocking USED and the Office of Personnel Management (OPM) from sharing private information of federal employees and student borrowers with the “Department of Government Efficiency” (“DOGE”). The court found that it is likely that sharing plaintiffs’ personal data violates multiple federal privacy laws, that disclosing the data to other government officials such as “DOGE” staff is a harm even if the data is not made public, and the privacy violations here could cause irreparable harm to the plaintiff that future monetary damages would be insufficient to compensate.

- **What does this mean for education?** The injunction applies only to the plaintiffs, and other courts have come to a different conclusion about whether DOGE’s mere access to the data causes enough of a harm to justify a TRO. It is therefore likely that this issue will be appealed to higher courts.

4. RESTRICTING IMMIGRATION ENFORCEMENT IN “SENSITIVE” SPACES

In *Philadelphia Yearly Meeting of the Religious Society of Friends et al. v. Department of Homeland Security et al.*, the U.S. District Court for the District of Maryland [issued](#) a preliminary injunction on 2/24/25 blocking the Administration’s ability to engage in immigration enforcement activities in the plaintiff religious groups’ places of worship. In conjunction with the [“Protecting the American People Against Invasion”](#) Executive Order, the Department of Homeland Security on 1/21 rescinded the Biden Administration’s guidance carving out certain “sensitive areas” such as places of worship, hospitals, and *schools and universities* from immigration enforcement.

- **What does this mean for education?** The injunction applies only to places of worship and even more specifically only those belonging to the specific plaintiffs in the suit. Education leaders should continue to stay informed about this and any related litigation about the change in the sensitive areas guidance (including a [suit](#) brought by Denver Public Schools).

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 February 26, 2025 at 11:00 am EST.