

# Legal Issues Impacting Community Colleges

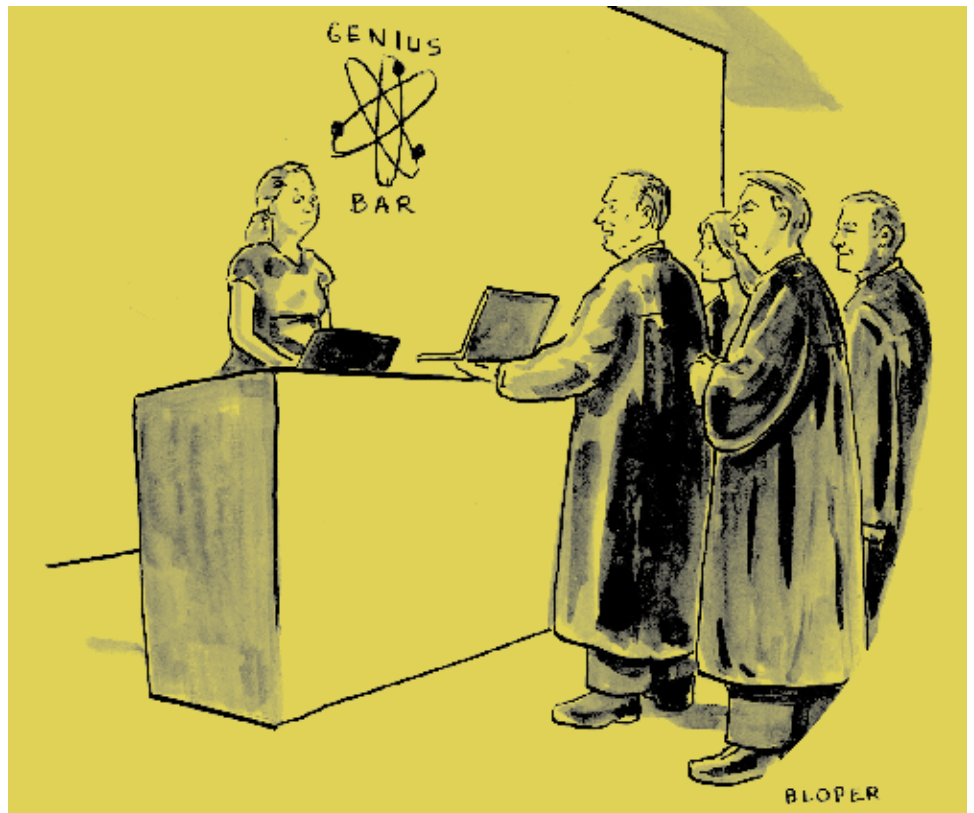
**Early Trump Administration executive orders and guidance focus on diversity, equity, and inclusion programs in the federal government and in higher education.**

BY IRA MICHAEL SHEPARD, ACCT GENERAL COUNSEL

Civil rights groups sue the Trump Administration to stop anti-DEI initiatives and the elimination of transgender protection for federal government employees.

The following recent legal developments are important to the day-to-day administration of community colleges throughout America. This article does not provide legal advice; all readers are advised to seek legal guidance from their institution's legal advisors before acting on any of the topics discussed herein.

Because of the unprecedented nature of some of the administrative changes recently announced by the new presidential administration, the resulting litigation, and interim court decisions, developments are changing weekly and at times daily. The developments reported in this article were correct when submitted for publication but are subject to change as events occur.



*"Can you help us understand some pending tech lawsuits?"*

**Court of appeals stays federal judge's order halting part of the Trump Administration executive orders targeting DEI plans, which remain in full effect subject to consideration of the constitutional issues.** On March 14, 2025, the Court of Appeals for the Fourth Circuit stayed a Baltimore federal court judge's preliminary injunction halting enforcement of the Trump Administration executive orders targeting government contractor diversity, equity, and inclusion (DEI) plans as possibly illegal and discriminatory. The federal judge had granted in part a request for an injunction holding that several provisions of the executive orders are unconstitutionally vague (*National Association of Diversity Officers in Higher Education et al. v. Trump et al.*, D. Md., No. 1:25-cv-00333, 2/21/25).

The Baltimore federal judge's decision was appealed by the Trump Administration to the Fourth Circuit Court of Appeals, which decided to stay the federal judge's decision on the injunction until it could hear all the constitutional issues and decide the matter on an expedited basis. The result is that for now, the original Trump Administration executive orders remain in effect.

**Education Department "Dear Colleague" letter broadly interprets the Supreme Court decision in *SFFA v. Harvard* to apply to all campus activities.** The U.S. Department of Education's Acting Assistant Secretary of Civil Rights issued a "Dear Colleague" on February 14, 2025, broadly interpreting the Supreme Court decision outlawing the use of race in college admissions in *SFFA v. Harvard* to apply to all campus policies and activities. The letter warns colleges and universities against using race as a preference in any policy and activity and encouraged anyone believing that an institution has violated civil rights laws to contact the Office of Civil Rights (OCR).

The letter directly criticized the development of DEI activities on campus and warned that the Education Department will not tolerate overt or covert race discrimination, which it concluded has become "widespread at our nation's educational institutions." The letter asserted that educational institutions have "toxically indoctrinated" students with the false premise that the U.S. is built upon "systemic and structural racism." The letter indicated that the Department would take appropriate steps to assess compliance with civil rights laws no later than 14 days after the letter was issued.

A "Dear Colleague" letter does not rise to the level of a statute passed by Congress and signed by the President. Nor does it contain the "fence of law" attributed to a Supreme Court decision. It is, however, an accurate description of the likely enforcement policies that the Education Department will follow in its interpretation of the laws it is responsible for enforcing. Those enforcement policies are subject to legal challenges.

**Trump Administration curtails OFCCP authority over affirmative action plans and requires contractors and grant**

**recipients to certify that they do not operate DEI programs that violate civil rights laws.** The Trump Administration issued an executive order on January 21, 2025, rescinding EO 11246, which established much of the authority of the Office of Federal Contract Compliance Programs (OFCCP) to require affirmative action plans at employers which are federal government contractors. The executive order curtails the OFCCP from promoting affirmative action and workplace balancing based on race, sex, color, religion, national origin, or sexual preference.

The Administration also revoked EO 13672, which shielded federal government contract workers from discrimination based on sexual preference and gender identity. The order allows contractors to continue to comply with obligations in effect on January 20 for 90 days. Its executive order also requires contractors to certify that they are not carrying out DEI initiatives that the Administration would deem violate federal civil rights laws. At the end of February, the OFCCP announced that it was preparing to cut employees by almost 90% from 479 to 50 as a result of abandoning enforcement of affirmative action and other programs.

The executive order also requires the U.S. Attorney General and the Secretary of Education to issue further guidance to higher education institutions on compliance with the Supreme Court's ruling in *SFFA v. Harvard* within 120 days.

**Civil rights groups sue the Trump Administration to stop anti-DEI initiatives and the elimination of transgender protection for federal government employees.** A group of civil rights organizations led by the Urban League have sued the Trump Administration to stop the administration's anti-DEI Initiatives and its elimination of protection of transgender federal government employees (*National Urban League v. Trump*, D.D.C. 1:25-cv-00471, Complaint 2/19/25).

The lawsuit seeks to halt the enforcement of three executive orders — EOs 14158, 14168, and 14173. It alleges that the executive orders are unconstitutional because they suppress free speech. The civil rights groups also allege that they target specific "content" and "viewpoints" and use "vague subjective terms," making them "unconstitutionally void for vagueness" under past Supreme Court precedent.



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